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TABLE OF CONTENTS

Nos.	PAGES
1. Taxation of Corporations in Illinois other than Railroads, since 1872. By Joel R. Moore, A.M.....	1-110
2-3. The West in the Diplomacy of the American Revolution. By Paul C. Phillips, Ph.D.....	III-358
4. Development of Banking in Illinois, 1817-1863. By George W. Dowrie, Ph.D.....	359-540

UNIVERSITY OF ILLINOIS STUDIES

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Taxation of Corporations in Illinois
OTHER THAN RAILROADS, SINCE 1872

BY

JOEL ROSCOE MOORE, A.M.

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PREFACE

This is a study of the taxation of corporations in Illinois, other than railroads, since 1872. It considers chiefly those features of the state and local taxing methods that have been designed especially for taxing the intangible property of corporations.

Detailed exposition of the taxing of corporations under the provisions of the general property tax, is not attempted; the general property tax is a large study in itself. The same policy has been followed in regard to special taxes on corporations. Railroad taxes are excluded also because they require a lengthy separate study; and any general statement in these pages, may or may not apply to railroad corporations. Eighteen hundred seventy-two is the date selected for the beginning of this study because under the new constitution adopted in 1870, the general assembly in that year enacted the general revenue law which in its main features has remained unchanged to the present.

This study was made in 1909; but has been edited and revised to include changes in the revenue law and data since that time.

CONTENTS

CHAPTER I.

INTRODUCTION, AND BRIEF ANALYSIS OF CORPORATION TAXES IN ILLINOIS..	5
---	---

CHAPTER II.

THE STATE BOARD OF EQUALIZATION RELATIVE TO "CORPORATE EXCESS" METHOD OF ASSESSMENT.....	17
---	----

CHAPTER III.

COLLECTION OF CORPORATION TAXES: "CORPORATE EXCESS" METHOD TESTED IN COURTS.....	47
---	----

CHAPTER IV.

METHODS OF ASSESSMENT OF CORPORATIONS EXEMPT FROM "CORPORATE EXCESS "METHOD.....	54
---	----

CHAPTER V.

LICENSE AND EXAMINATION FEES AND "RECIPROCAL" TAXES.....	73
--	----

CHAPTER VI.

OBSERVATIONS AND DEDUCTIONS.....	92
BIBLIOGRAPHY	106
INDEX	107

CHAPTER I.

INTRODUCTION AND BRIEF ANALYSIS OF CORPORATION TAXES IN ILLINOIS.

Business organization in Illinois, as in other states, has long been predominantly that of the corporation. Every year of the last forty years, the period under examination, has seen a larger number of business enterprises adopting the methods of investment, management and liability peculiar to the corporation. Greater and greater amounts of property have been taking a more or less intangible form. Some of these forms are stocks, bonds, leases, franchises and good will.

This intangible form of property defies the most assiduous efforts of the local assessor to value it properly¹ under the head of real estate and personalty. This is not necessarily because of obstructions placed in his way by the corporation, as a person seeking to evade proper assessment, though too often such may be the case; but it is largely due to an inherent defect in the system of taxing on a general property valuation, namely, that the system was not devised so as to reach intangible values, (or "invisible value", as denominated by a certain prominent Chicago corporation.²) Our New England forefathers adopted the general property tax at a time when the modern business corporation was practically non-existent, when a person's ability to pay taxes could be quite accurately determined by the amount of his real estate and personal property. Both were intimately associated with his person and were in a form that could be seen and valued by the assessor. But the corporate person of to-day as a busi-

¹Argued by corporation that it is practically impossible to value franchise. *Porter et al vs. R. R. I. & St. L. R. R. Co.*, 76 Ill. 561 (1875).

²Chicago Chamber of Commerce, letter to State Board of Equalization, seeking to justify its refusal to return statement of capital stock value. *Proceedings State Board of Equalization*, 1873, p. 17.

ness unit often controls real estate whose value to the corporation is, for the assessor, very difficult to determine.³ Secondly, as a business unit, the corporation very often controls personal property in the shape of stocks, bonds, franchises and good will,⁴ the values of which to the corporation it is practically impossible for the assessor to determine.

This defect in the general property method whereby corporations escape proper assessment has long been recognized in American states, especially the older ones. Several of the Commonwealths have gone so far toward correcting it as to put corporation taxes into a separate system.⁵ In Illinois the defect became a matter of administrative and constitutional concern a few years prior to and at the time of the framing of the constitution of 1870. Evidence on this point may be found in the records of the State Board of Equalization in 1867,⁶ and in the records of the debates in the Constitutional Convention of 1869.⁷ But while, perhaps, under the present constitution, of 1870, a separate system might have been devised for taxing corporations in Illinois,⁸ none has, as yet, been devised by the legislature.

However, something has been done toward remedying the defect, above discussed, in the assessment of intangible property of corporations. In 1872 the legislature enacted a new revenue law, which modified the system of assessment in regard to the property of corporations organized under the laws of Illinois.

In taking up the analysis of corporation taxes under

³*E.g.* road-bed, mines, timber lands and wharf, dock and elevator sites.

⁴Monopoly of organization and services might be added.

⁵*E.g.*, New York, Massachusetts, New Jersey, Pennsylvania.

⁶*Proceedings State Board of Equalization*, 1867, pp. 37-38, 58-59.

⁷Debates and Proceedings of Constitutional Convention, pp. 211, 263.

⁸The proposal of the Revenue Commission of 1885-6 assumes as much. Also, so argued by Gov. Oglesby. Rep. to Assembly, 1887, vol. I, p. 13A. See also opinion Sup. Ct., *Raymond vs. Hartford Fire Ins. Co.*, 196 Ill. 329 (1902) *obiter*.

the system established since 1872, it will be well first to define them. In the words of Professor Seligman, "Taxation of the corporation does not mean taxation of the security holder who has purchased the stock or bond from the original owner."⁹ It has been argued that the taxation of the shares of stock in the hands of stockholders is also a tax upon the corporation, and that the shareholders, not the corporation, own the properties of the corporation; but in denial of this, it has been held by the Courts of Illinois, of the United States and of England, that the property of the shareholders in a corporation is quite distinct from that of the corporation.¹⁰ Evidently then Professor Seligman's definition of what is not a corporation tax, has found standing in jurisprudence. In a positive way, corporation taxes may be defined as those taxes which the corporation as a person, through its officers, must pay to the governments, local, state and national. This definition may be further extended in the words of the Supreme Court in 1876:

It has been held that a corporation is possessed of three kinds of property subject to taxation: 1. capital stock; 2. corporate property; 3. franchise.¹¹

The Justice in reinforcing the Court's opinion cites a similar opinion of the United States Supreme Court.¹² In the same year, 1876, the United States Supreme Court, in a corporation tax case, arising under the present Illinois law, the law of 1872, spoke as follows:

That the franchise, capital stock, business, and profits of all corporations are liable to taxation in the place where they do business, and by the State which creates them, admits of no dispute at this day.¹³

⁹*Pending Problems in Public Finance*. Pamphlet, 1904.

¹⁰*Porter vs. R. R. I. & St. L. R. R. Co.*, 76 Ill. 561 (1875), citing opinion of U. S. Sup. Ct. 1865, "The tax on shares is not a tax on the banks", *Van Allen vs. The Assessors*, 3 Wallace 583 (1865), citing opinion of Lord Denman in case of *Queen vs. Arnand* (9 Adolphus & Ellis, N. S. 806).

¹¹*Ottawa Glass Co. vs. McCaleb*, 81 Ill. 556 (1876).

¹²*Gordon vs. The Appeal Tax Court*, 3 Howard 133 (1844).

¹³(Ill.) *State Railroad Tax Cases*, 2 Otto 603 (1876), citing *Society for Savings vs. Coite*, 6 Wall 607 (1867).

In the words of the Supreme Court of Illinois, capital stock is construed to mean "all the property and rights of the corporation, of any kind or nature, wherever located."¹⁴ This, as will be seen later, is a construction of a phrase, "capital stock including the franchise," occurring in the revenue law. For a definition of taxation on "franchise," as enumerated thirdly in the opinion above, Professor Seligman again is of assistance. In his article in the *Review of Reviews* for June, 1904, on "The Special Franchise Tax in New York," he defines a franchise tax on a corporation to be a tax: 1. on the right to be or become; 2. on the right to do or act; 3. on the right to make use of local privileges. An example of the first is a fee for incorporation; of the second, a license tax on business done; of the third, license tax for use of streets for tracks or gas mains.¹⁵

By way of summary, corporation taxes in Illinois may now be re-defined to be those taxes which the corporation, as a person, through its officers, pays on its realty and personalty, its capital stock, and its franchise values. Or, viewed from another angle, the taxation of corporations in Illinois means the attempt of the State to tax each¹⁶ corporation upon its actual value¹⁷ as a going concern.¹⁸ This, as already stated, is not accomplished, however, by a separate system of corporation taxes. The following brief analysis explains how it is attempted.

Since 1872 corporations have been taxed under two main heads: 1. Under the modified general property tax system; 2. under the police power of the State. The constitutional basis for the system lies in sections one and two

¹⁴O. & M. R. R. Co. vs. Weber, 96 Ill. 445 (1880).

¹⁵*Review of Reviews*, XXIX, 716-718.

¹⁶Certain classes of corporations are excepted; see chap. IV.

¹⁷One-third, rather, as in case of all other persons, since 1909. Prior to that on same scale as other property, ranging from 60% in '73 to 59% in the '80's to 25 and 20% in the '90's.

¹⁸Seager, "Introduction to Economics" p. 555 ff., "corporation taxes." Also Pacific Hotel Co. vs. Lieb, 83 Ill. 602 (1867).

of Article IX, the article on Revenue. They are as follows:¹⁹

Sec. 1. The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person *and corporation* shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise; but the general assembly shall have power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, innkeepers, grocery keepers, liquor dealers, toll bridges, ferries, insurance, telegraph and express interests or business, venders of patents, and persons or *corporations owning or using franchises and privileges*, in such manner as it shall from time to time direct *by general law, uniform as to the class upon which it operates*.

Sec. 2. The specification of the objects and subjects of taxation shall not deprive the general assembly of the power to require other subjects or objects to be taxed in such *manner* as may be *consistent with the principles of taxation fixed in this constitution*.

Sections nine and ten of the Revenue article contain limitations upon that power. They are as follows:

Section 9. The general assembly may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of contiguous property, or otherwise. *For all other corporate purposes*, all municipal corporations may be vested with authority to assess and collect taxes; but *such taxes* shall be uniform in respect to persons and property, within the jurisdiction of the body imposing the same.

Sec. 10. The general assembly shall not impose taxes upon municipal corporations, or the inhabitants or property thereof, for corporate purposes, but *shall require that all the taxable property* within the limits of municipal corporations *shall be taxed* for the payment of debts contracted under authority of law, *such taxes to be uniform in respect to persons and property*, within the jurisdiction of the body imposing the same. Private property shall not be liable to be taken or sold for the payment of the corporate debts of a municipal corporation.

Obviously section one of the revenue article of the constitution, as seen above, in italics, affords basis for acts of the legislature providing for the taxation of corporations under the two main heads outlined above at the beginning, namely, the general property tax, and police power, or regulative tax. Further, section one, clause two,

¹⁹Constitution of Illinois, 1870. Article IX. Italics not in original.

and section two, afford basis for the power of the legislature to modify the general property tax method so as to subject corporations, or rather certain classes of corporations, to a special scheme of assessment.

It is also obvious that the only limitations "fixed in this constitution" in regard to the power of the general assembly to devise improved methods of taxing corporations, consist—as suggested by the italicizing above—in the two fundamental principles of "uniformity and equality in the distribution of the burdens of taxation,"²⁰ and also in the mandates of sections one and ten, that all taxing must be "by general law", and that the legislature must require cities to levy a general property tax upon corporations as on other persons.

The general assembly—the courts sustaining by legal decisions²¹—has interpreted its power to be plenary enough "to tax occupations, franchises, privileges, and business and property interests of different kinds in a different manner from the manner prescribed for the taxation of property generally."²² And in 1872, the first general assembly, under the present constitution, framed a new revenue law which provided that under the modified general property tax system, corporations, other than railroads,²³ are taxed in two ways: 1. in general, on real estate and personal property, assessment being made by local assessors; 2. on "corporate excess", assessment being made by the State Board of Equalization. The first aims to assess the tangible property, the second to assess the intangible, "invisible", property of the corporation. The assessment of

²⁰Justice Carter, *Raymond vs. Hartford Fire Ins. Co.*, 196 Ill. 337 (1902).

²¹Treated in Chapter III.

²²Justice Carter's words; *Raymond vs. Hartford Fire Ins. Co.*, 196 Ill. 337 (1902); *Porter vs. R. R. I. & St. L. R. R. Co.*, 76 Ill. 561 (1875).

²³While this study excludes railroad corporations, it may be stated here that most of their tangible property as well as their "corporate excess" is assessed by the Board of Equalization. But the scheme of distribution of assessment is different.

the "excess" is returned ultimately to the local tax collector²⁴ and combined with the local assessment on tangible property, the sum of the two being taken as the assessed valuation upon which the corporation pays the general property tax, local and state.

A brief statement will suffice in regard to the local assessment of real estate and personal property. It is the same for corporations as for natural persons. The local assessor views and assesses the realty.²⁵ An officer of the corporation must list the personal property in May or June with the local assessor who may, if he thinks the list not "full, fair and complete", examine the corporation under oath as to the amount of the personal property.²⁶ (Law of 1898 provides that oath must be taken in every case.) If the corporation refuses to list or submits a fraudulent list, it is subject to a fine of from \$10 to \$2000, and to punishment for perjury.²⁷ When the corporation refuses to submit a list of its personal property, it is the duty of the assessor to return one "according to his best judgment and information."²⁸ From these lists the assessor determines the valuation on personalty. This valuation combined with the valuation on real property gives the tangible property valuation of the corporation.

The assessment of the intangible property of corporations, by the State Board of Equalization, under what is known as the "corporate excess" method, may also be discussed briefly here because its administration by the Board from 1872 to the present, will, in another chapter, be treated at length. The Board receives returns from each corporation²⁹ giving statements: 1. of its capital stock and its market or actual value on April 1; 2. of its funded debt;

²⁴Except in cases of telegraph companies, whose tax on "excess" is collected by county collector. Revenue law, Hurd, 1872, sec. 54.

²⁵Revenue law, Hurd, sections 4, 76.

²⁶Revenue law, Hurd, sections 4, 6, 24, 26.

²⁷*Idem*, sections 56, 57.

²⁸*Idem*, sections 26, 83.

²⁹Certain classes excepted; treated in Chapter IV.

3. of its assessed valuation on tangible property.³⁰ The Board also may have or may obtain information from other sources³¹ in regard to the value of the capital stock including the franchise, and of the funded debt. It determines the value of these and takes one-third of the amount (before 1909 one-fifth)³² to be the assessed value of the corporation's total property both tangible and intangible. Meanwhile the Board in its other duty of equalizing real and personal property assessments among counties may have found that the realty and personal property of the county where the corporation is located, is assessed above or below the average of state valuation, in which case the Board equalizes such county valuation by directing all property to be raised or lowered some certain percentage. Now, the Board, itself, uses this determined percentage to compute the equalized value of the realty and personal property of the corporation assessed by the local assessor and reported by the corporation to the Board.³³ The Board then deducts the amount of this equalized value of tangible property assessed locally, from the amount which, as already explained, it has determined to be the total value of the corporation's taxable property, both tangible and intangible.³⁴ The remainder, if any, is taken to be the assessment of the intangible value, the "corporate excess" which the Board is required to certify through the Auditor to the county clerk, to be entered on the tax roll³⁵ against the name of the corporation. Thus the intangible and tangible property of the corporation are reached, the one mainly through the Board of Equalization, the other through the local assessor.³⁶

³⁰Revenue law, Hurd, section 32.

³¹Quincy Bridge Co. vs. Adams County, 88 Ill. 615 (1878).

³²Laws of Ill., 1898, amending revenue law, p. 43.

³³*Proceedings State Board of Equalization*, 1873, p. 16 (Rules); also *State Board of Equalization vs. People*, 191 Ill. 528 (1901).

³⁴*Idem*.

³⁵Revenue law, Hurd, section 108.

³⁶But the law exempts the shares of stock in the hands of stockholders from local assessment, if Board assesses capital stock.

Besides taxing corporations under the modified general property tax system, Illinois also taxes them under the police, or regulative power. Domestic corporations are required to pay fees for incorporation, for increase of capital stock, and for filing periodical reports;³⁷ This is a growing source of State revenue, and is a subject itself large enough for separate study;³⁸ hence it is passed over briefly in this study. Foreign corporations are required to pay fees for filing reports, for licenses to their agents, and "reciprocal" taxes, fines, fees and so forth. Finally, all corporations are subject to municipal license and franchise taxes.

The foregoing analysis from the viewpoint of governmental purpose and method, may now be supplemented by one from another viewpoint, namely, the consideration of the character of the corporation. For this purpose, all corporations existing in Illinois may be classified as follows:

- A. Public Corporations.
 - I. County and township.
 - II. City and village.
 - III. Public institutions and bodies.
 - a. Educational.
 - b. Eleemosynary.
 - c. Administrative boards.
- B. Private Corporations.
 - I. Not for pecuniary profit.
 - a. Religious, educational, library, charitable, cemetery, agricultural, horticultural, mechanical, philosophical.
 - b. All others.
 - II. For pecuniary profit.
 - a. Business, or commercial.
 - 1. National Banks.
 - 2. Banks under general banking law.
 - 3. Building and loan associations.
 - 4. Corporations organized for purely manufacturing and mercantile purposes, for printing, publishing, mining and sale of coal, stock-breeding.

³⁷To be dealt with later.

³⁸See "Special Taxes", Master's thesis, University of Illinois, 1909, by T. E. Latimer.

5. Private banks organized under special laws, loan companies, domestic insurance companies, bridge companies, dredging companies, hotel companies, storage companies, laundry companies, amusement companies, hardware companies, dry goods companies, provision companies, restaurant companies, dairy companies, and many others. (Names of over 2500 private business corporations to be seen in tables of the Proceedings of Board of Equalization, 1907).
6. Foreign private business corporations for profit, insurance companies noted especially.
- b. Public Service Corporations.
 1. Telegraph, telephone.
 2. Express, freight, elevator.³⁹
 3. Street railroad, ferry, road, tunnel.
 4. Gas, coke, electric, water.
 5. Crematory, garbage.

In regard to class A little is to be said except that the constitution permits and the revenue law provides that the property of all such corporations shall be exempt from taxation.⁴⁰ In fact the constitution prohibits the general assembly from taxing municipalities.⁴¹

Those corporations in class B, I, a. must pay an incorporation fee of \$10; but if they use their property purely for social purposes, as indicated in their charters or constitutions, and not for pecuniary profit, the constitution permits⁴² and the revenue law provides⁴³ that they shall be exempt from taxation on the property. However, the law is construed very strictly; and if a society, association or organization own buildings or other property which is used for some foreign purpose, wholly or in part, and thereby returns the society a pecuniary profit, it must pay taxes on such property the same as though it had organized as a business corporation for pecuniary profit. More will be

³⁹Those that own public warehouses.

⁴⁰But city property owned and used in a foreign taxing district for profit to the city is taxable by that foreign district.

⁴¹Constitution of 1870, article IX, section 10.

⁴²Art. IX, sec. 3.

⁴³Revenue law, Hurd, sec. 2.

said about this in a chapter devoted to corporations exempt from "corporate excess" methods.

The corporations in class B, I, b. pay the \$10 incorporation fee, the annual fee for filing reports, and taxes upon their real estate and personalty. This class includes clubs and other social organizations, which have become incorporated. An incorporated labor organization also comes in this class, and its strike fund is taxable.

Corporations of classes B, II, a., 1, 2, 3, 4, with exception of national banks, pay incorporation fees which vary with the amount of the capital stock, and fees for increase of capital stock; also fees for filing annual report; and banks pay fees for their quarterly reports and expense of state inspection.⁴⁴ They all pay taxes on their real and personal property as assessed by the assessor; but for various reasons, they are not taxed on a "corporate excess", or intangible property valuation, assessed by the Board of Equalization. National banks are by the laws of the United States exempt from that tax.⁴⁵ The others are exempted by the revenue law of the state.⁴⁶ Full explanation of these exemptions from the "corporate excess" is given in Chapter IV.

Corporations in classes B, II, a, 5, and b. 1, 2, 3, 4, 5 are those which are taxed on their "corporate excess", as well as on real and personal property, and by fees for incorporation and increase of capital stock. This class comprises a small number of corporations; in 1907 the Board of Equalization determined the taxable valuation of 2,536 of them, of which only 1,302 companies were found to have an "excess"⁴⁷ value "over and above the assessed value of the

⁴⁴Further details in Chapter IV.

⁴⁵Act of Congress 1864. See *Baker vs. First National Bank*, 67 Ill. 297 (1873).

⁴⁶State banks exempted in 1867. Laws of Ill. 1867, special session, p. 6. But banks organized under special charter instead of under the general banking laws, were subject to the "corporate excess" assessment by the Board from 1873 to 1893.

⁴⁷Denominated "excess" in tabulated reports of Board.

tangible property."⁴⁸ This assessment of the "corporate excess" is the most notable feature of the taxation of corporations in Illinois; and since the Board of Equalization from 1872 to the present, has had the administration of that duty, further exposition of this method will be given in the chapter on the "corporate excess" method of assessment.

It must be noted further in regard to public service corporations that in municipalities they are taxed also on their franchise rights "to make use of local privileges."⁴⁹

Corporations in class II, B, a., 6, that is foreign corporations for profit, are, in general, taxable only on real and personal property. They cannot be taxed on capital stock and franchise right "to be", that is by the "corporate excess" method. But, under the police power of the State, they are subject to license taxes for the franchise right "to do or act" or "to use local privileges." Insurance companies are to be especially noted with respect to "reciprocal" taxes; but since the exposition is detailed, it has been placed in chapter five.

If this first chapter has given a general idea of the problem of taxing corporations, of the nature of corporation taxes, and of the method used in Illinois in taxing corporations, it has accomplished its purpose. The exposition of the details of the subject and of the historical development of corporation taxation since 1872, will be taken up in the following chapters.

⁴⁸Language of revenue law, Hurd, sec. 3, clause 4.

⁴⁹Seligman's definition, quoted above.

CHAPTER II.

THE STATE BOARD OF EQUALIZATION RELATIVE TO "CORPORATE EXCESS" METHOD OF ASSESSMENT.

The State Board of Equalization was authorized by the legislature in 1867.¹ The first Board, which met at Springfield, October 1, 1867, was composed of twenty-six members: the Auditor of Public Accounts, and one member elected from each of the twenty-five Senatorial districts. The duty of the Board was to equalize the aggregate assessed valuation of property reported to the Auditor by the county clerks, that is to place all the counties of the State on the same percentage level of valuation. This the Board did by directing certain percentage increases of valuation to those counties which they found to be assessed below the general average percentage of cash valuation, and certain percentage decreases to those counties which they found to be assessed above the average.

But the Board of Equalization in the period from 1867 to 1872 had no power beyond that of equalizing county valuations. It had not the power to assess corporations as it has had since 1872. Neither was there any separate equalization of corporation property; the assessed valuation of such property in any given county was raised or lowered or left intact, as the case might be, after the equalizing direction of the Board, in the same manner and to the same extent as was other property in the same given county.

However, the influence of the Board on corporation taxation is worth noticing. In ascertaining the rightful valuation of property in the various counties, pursuant to their duty of equalizing, the Board early discovered at its first session the problem of properly assessing corpora-

¹Laws of 1867, p. 105.

tions.² The Committee on Personal Property reported a resolution recommending to local assessors that all bank, insurance, railroad and other stocks be returned at par value.³ The next year the Board passed resolutions recommending revision and amendment of the law,⁴ and in 1869 the Board authorized Chairman Lippincott and Secretary Stadden to prepare a revenue bill to present to the Board at its session in 1870.⁵ It was prepared as ordered and, from October 7, 1870, to October 24, the Board had the proposed revenue bill under consideration.⁶ On the 26th it was proposed to authorize a committee to urge its passage at the next legislature, but on the next day it was decided to leave the duty to Chairman Lippincott and Secretary Stadden.

Governor Palmer, in his message of January 4, 1871, to the General Assembly, recommended this bill "as the work of practical men of extensive experience."⁷ At the regular session in 1871 the legislature failed to provide a new revenue law, but at its special session in 1872, on March 30, enacted the general revenue law under which the State Board of Equalization has had a large part of the work of assessing the property of Illinois corporations.

In 1872 at a meeting of the Board of Equalization, Chairman Lippincott said:

I can not forget that the State of Illinois owes to this Board the inception of an improved revenue system, which in my opinion will prove of inestimable service to the state....The care, the intelligence, the conscientious effort displayed by this Board in the original draft of the revenue law, calls for my high admiration.⁸

From the foregoing facts drawn from records of the Board's proceedings relative to its action in regard to the new revenue law, from the statement of Governor Palmer,

²*Proceedings State Board of Equalization*, pp. 37-38, 58-59.

³*Idem*, p. 60.

⁴*Idem*, 1868, p. 81.

⁵*Idem*, 1869, pp. 37-39, 58-59.

⁶*Idem*, 1870, Oct. 7 to Oct. 27.

⁷*Journal of Senate*, 1871, vol. 1, p. 27, Governor's Message.

⁸*Proceedings State Board of Equalization*, 1872, p. 61.

and from the remark of Mr. Lippincott, it may be safely inferred that the Board of Equalization in its early period from 1867 to 1872 had a large influence upon the preparation of the present system of taxing corporations.

Three other facts might be noted in this connection. First, the New York Tax Commission of 1870 recommended the "corporate excess" method of assessing corporations.⁹ Second, Chairman Lippincott of the Board of Equalization, who was chief author of the revenue bill of 1871-1872, was in New York in the summer of 1870.¹⁰ Third, in a letter to Governor Palmer five days before the passage of the revenue law of 1872, Mr. Lippincott, urging the necessity of passing the new law, showed that under the laws then in force much intangible property was escaping taxation.¹¹

Since the revenue law of 1872 the Board of Equalization has had a prominent part in the taxation of corporations. The powers and duties of the Board were enlarged by adding to its equalizing duty that of assessing the intangible property of corporations. The capital stock of companies and associations organized under the laws of Illinois¹² is so valued by the Board as "to ascertain and determine respectively the fair cash value of the capital stock including the franchise over and above the assessed valuation of the tangible property." The excess in the value of the capital stock, including the franchise, over and above that of their tangible property, is known as the "corporate excess."

To assist the Board in this work, the law provides that all corporations that are subject to assessment by the Board shall in addition to the lists of personal property, "make out and deliver to the assessor a sworn statement of

⁹Jas. K. Edsall, brief to United States Supreme Court, *State Railroad Tax Cases*, II Otto 592 (1875).

¹⁰Report to General Assembly, 1871, vol. 4, page 85.

¹¹*Idem*, page 101.

¹²Not all; certain classes of corporations have been exempted from time to time; see chapter IV.

the amount of its capital stock, setting forth particularly:

First. The name and location of the company or association.

Second. The amount of capital stock authorized, and the number of shares into which such capital stock is divided.

Third. The amount of capital stock paid up.

Fourth. The market value, or if no market value, then the actual value of the shares of stock.

Fifth. The total amount of indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

Sixth. The assessed valuation of all its tangible property, such schedule to be made in conformity to such instructions and forms as may be prescribed by the Auditor of Public Accounts.¹³

These statements are returned by the assessor to the county clerk, by him forwarded to the Auditor, and by him are turned over to the Board of Equalization. In case of Illinois telegraph companies, the data are collected in a slightly different way. Each company returns its statement directly to the Auditor, annually, in the month of May.¹⁴ The statements of the telegraph companies must, in addition to the information required of other corporations, contain information as to the length of lines operated in each county and the total in the state.¹⁵

There is, however, no means of enforcing the foregoing provisions. The law provides, that in all cases of failure or refusal of a corporation to make a sworn statement on the proper blank, and return it to the assessor, that the assessor shall make the return from the best information

¹³Revenue Law 1872, section 32.

¹⁴Revenue Law 1872, section 53.

¹⁵A foreign corporation that operates an Illinois corporation's line under lease, must make return for the Illinois line. *Postal Tel. Cable Co. vs. Barnard*, 37 Ill. App. 105 (1890).

which he can obtain.¹⁶ To get additional information and to supply deficiencies in regular returns, data may be secured by independent investigation of the Board.¹⁷

The rules by which the Board of Equalization assess the "corporate excess" are, according to the provisions of the law, left to the discretion of the Board, itself. The Supreme Court of Illinois in 1874 denied that the granting of power to the Board to adopt its own rules of assessment, was a delegation of legislative power, and sustained the validity of the provision in the revenue law, granting such power to the Board of Equalization.¹⁸ The discussion of the making of their rules, and also, of the constitutional and statutory¹⁹ limitations upon the character of the rules for assessing the "corporate excess", will be treated below in the history of the Board's administration.

After the Board of Equalization has assessed the amount of "corporate excess" to each corporation that is subject to its jurisdiction, its further duty consists in certifying the "excess" to the clerks of the counties in which the corporations are located, so that the "corporate excess" may be spread upon the tax roll along with the other property of the corporation.²⁰

A brief history of the Board's administration might easily occupy an extensive volume. In this study is included such portion only of its history as is needful for the exposition of its powers and jurisdiction, its difficulties in getting data, its rules for valuing the corporation as a

¹⁶Revenue Law 1872, section 32.

¹⁷Sup. Ct., *St. L. V. & T. H. R. R. Co. vs. Surrell*, 88 Ill. 535 (1878).

¹⁸*Porter vs. Rockford, Rock Island & St. Louis Railroad Co.*, 76 Ill. 563. (1875, Jan. term).

¹⁹Laws of Illinois, special session, 1898.

²⁰The Supreme Court has construed the tax on the "corporate excess" to be a personal property tax. *Quincy Bridge Co. vs. Adams County*, 88 Ill. 615 (1878); *Peter Saup et al vs. Morgan & Co.*, 108 Ill. 326 (1884); *Parsons et al vs. Gas Light & Coke Co.*, 108 Ill. 380 (1884); *The Hub vs. Hanberg*, 211 Ill. 43 (1904).

going concern, and its efficiency²¹ as an assessor of intangible property.

The Board had but little difficulty interpreting its new powers and duties. The law is plain in regard to the duties; but it leaves the Board wide discretionary powers as to the rules it shall use. It may be noted that the Chairman of the Board from 1873 to 1876 inclusive, was Auditor C. E. Lippincott, who had been on the Board from 1868 to 1873 and had had much to do with the framing of the new revenue law. One error was made at the first session. The Western Union Telegraph Company, a foreign corporation owning lines in the state, was assessed at the same time Illinois telegraph companies were assessed. And the Supreme Court, in January, 1874, held that the Board had exceeded its jurisdiction in trying to bring foreign corporations under the operation of the "corporate excess" method of taxing capital stock and franchise.²² The Court decided the question on the wording and intent of the statute, not on the economic merits of the question. Economic opinion was not called for.

In 1890 the Appellate Court decided that it is the duty of a foreign telegraph company operating under lease the line of a domestic corporation, to return to the Auditor the schedule or statement required by law.²³

In 1880 the Supreme Court held that where a corporation is formed under the laws of Illinois, by consolidation of other corporations, one of which is incorporated under the laws of this and the others of other states, the new company is to be considered as incorporated under the laws of this state within the meaning of the revenue law of 1872. And the capital stock located or used in this state, of such corporation, is subject to be assessed and taxed as such.²⁴

²¹Facts brought out in this chapter; deductions from these facts brought out in Chapters III and IV, are reserved for concluding chapter.

²²Western Union Telegraph Co. vs. Lieb, 76 Ill. 172 (1874).

²³Postal Telegraph Cable Co. vs. Barnard, 37 Ill. App. 105 (1890).

²⁴Ohio and Mississippi R. R. Co. vs. Weber, 96 Ill. 443 (1880).

In 1896 a similar decision was handed down in the case of a bridge company which was a consolidation of Illinois and Iowa corporations. The Supreme Court held that "all the capital stock of a corporation formed by consolidation of corporations of different states is properly taxable in one of the states, as the corporate existence springs from the legislature of the state and is to be regarded and treated by the authorities of the state as domiciled there."²⁵ Here again the decisions hinge not on economic but on legal considerations.

Reference is to be made now to a jurisdictional question that was brought up under economic considerations. In 1895 at the first day's session of the Board of Equalization for that year, Mr. Cullerton, a member from Cook County, introduced resolutions which averred that large amounts of capital stock were escaping taxation because the companies had a majority of their stock "merged" in foreign corporations; and which requested the Attorney General to render his opinion as to the Board's right to assess the capital stock or such a portion thereof as may be made up of the capital stock of any corporation which was organized under, and was doing business under, the laws of Illinois at the time of the consolidation and reorganization under the laws of another state.²⁶ But the resolutions were postponed and later were tabled by a vote of ten to eight.²⁷ The question does not appear again in the records of the Board. It is a question that the jurist might, if a case ever arose, quite likely decide in the negative, but which the economist might decide in the affirmative. The jurist has to decide, consistently with his previous rulings, that the franchise value follows the legal person to its domicile in the state which gave to it the legal character of a person; but the economist has to consider the question of where the franchise value does actually exist.

²⁵Keokuk & Hamilton Bridge Co. vs. People, 161 Ill. 132 (1896).

²⁶*Proceedings State Board of Equalization*, 1895, p. 2.

²⁷*Idem*, p. 4.

Next in order is the consideration of the difficulties of the Board in getting data for an accurate administration of its duties. The revenue law provides that the Auditor shall devise proper blanks for the statements of corporations relative to capital stock, funded debt, assessed tangible property, etc.²⁸ "Blank number five" is the one furnished. Each corporation is bound by the law to fill out this blank, affix its sworn subscription, and deliver it to the assessor, who returns it, by way of the county clerk and the Auditor, to the Board of Equalization. But from the very first, from 1873 down, the corporations have been negligent and reluctant about complying with the law. Some of this at first may have been due, as the Capital Stock Committee of the Board reported in 1877, to the ignorance of the corporations as to the real meaning of the law.²⁹ Many of the sworn statements which were returned, were defective. They erred especially in 1873 in reporting their funded debts too high thinking that that would decrease their assessments. The contrary affect resulted, since the Board considered the value of the bonds, as well as the stocks, in determining the valuation of the corporation's entire property. Later they often neglected and refused to supply this information in regard to debt, and also as to the market or actual value of their capital stock. And every annual report of the Board shows that many corporations do not report the valuation of their tangible property by the local assessors.

In case of the refusal of a corporation to make out and deliver the required statement to the assessor, it is his duty to fill out the blank the best he can and return it to the county clerk. But the local assessors have very often neglected thus to co-operate with the Board. The minutes of the Board's Proceedings frequently complain of such dereliction of duty.³⁰

²⁸Revenue Law, sec. 32. See above.

²⁹*Proceedings State Board of Equalization*, 1877, p. 63.

³⁰*Proceedings State Board of Equalization*, 1873, p. 150; 1870, p. 63; 1885, p. 77; 1891, p. 16; 1900, p. 17. This latter year a majority of the county clerks had failed to return corporation statements to the Board.

At its first session in 1873 the Board undertook to get the required data from the corporations by exercising its power "to examine persons and papers."³¹ A special committee armed with a list, furnished by the Secretary of State, of all the corporations which had been incorporated since 1865 went to Chicago to investigate. They sent out circulars to the corporations, enclosing "blank number five", asking them to fill it out and return it to the Committee, and also appointing hours for the hearings of corporations relative to the assessment of their capital stock. But most of the corporations declined either to appear or to fill out the blanks. A characteristic reply was that of the Chicago Chamber of Commerce. The President of that company contended that the \$450,000 difference between the value of the capital stock and the value of the tangible property was "an invisible value and therefore not properly taxable under the revenue law". Further, he declared that if the revenue law should be construed by the Board so as to make such "invisible value" taxable, the Chamber of Commerce would dispute in court if necessary the constitutionality of the revenue law.³² The next year, 1874,³³ the Board, upon request, was informed by the Attorney General that they were not empowered to compel attendance of corporations for examination, and, that if the corporation refused to comply with the law and the local assessors were not able to supply the required information, the Board had no recourse but to assess the corporation upon the information which it could obtain otherwise.³⁴ This opinion was later sustained by the Supreme Court.³⁵

³¹Revenue law, sec. 109.

³²*Proceedings State Board of Equalization*, 1873, p. 17. The Chamber of Commerce was assessed \$305,000 in 1873; \$306,800 in 1874; \$216,800 in 1875.

³³The constitutionality of the revenue law having been upheld by the Sup. Ct. of Ill.

³⁴*Proceedings State Board of Equalization*, 1874, p. 5.

³⁵*St. Louis, Vandalia and Terre Haute Ry. Co. vs. Surrell*, 88 Ill. 535 (1878).

The Attorney General further informed the Board that section 56 of the revenue law provided a penalty for any person or corporation which failed or refused to comply with the law requiring lists and statements. The section is as follows:

Sec. 56. If any person or corporation shall give a false or fraudulent list, schedule or statement, required by this act, or shall fail or refuse to deliver to the assessor, when called on for that purpose, a list of the taxable personal property which he is required to list under this act, he or it shall be liable to a penalty of not less than \$10 nor more than \$2,000, to be recovered in any form of action, in the name of the People of the State of Illinois, on the complaint of any person. Such fine, when collected, to be paid into the county treasury.

But the fact that no action was ever brought by the Board under this section would lead to the suspicion that the Attorney General misconstrued the section. In fact in 1895 the Auditor of Public Accounts in his biennial report to the General Assembly, calls attention to the fact that there is no penalty provided for the refusal or neglect of corporations to return the statements required by section 32 of the revenue law.³⁶

One penalty, however, remained within the power of the Board to inflict, namely, that of assessing the non-complying corporations an arbitrary amount. But it is to be feared that the fact that corporations could refuse to supply data and not meet with severe assessment, in fact to slip out of it entirely, may largely account for the continued difficulty of the Board in getting the data.

The records of 1875, 1876, 1877, and 1884 show that the same policy was continued as at first, namely, to send out circulars and blanks to the corporations asking them to reply and inviting them to appear before the Board.³⁷ In 1877, 1878, 1879, and 1882 the records show that Investigating Committees "sat" in Chicago. (In 1894 a proposal to employ experts was tabled.³⁸) That some data were

³⁶*Reports to General Assembly*, 1895, Auditor, page viii.

³⁷*Proceedings State Board of Equalization*, 1875, p. 6; 1876, p. 5; 1877, p. 13; 1884, p. 10.

³⁸*Idem*, 1894, p. 4. Dahlman's resolutions.

gathered by replies to the Board's letters is evidenced by occasional minutes in the proceedings.³⁹ In 1885 it was seriously proposed by the Chairman of the Capital Stock Committee to draw up and to keep a record book of corporations which are subject to capital stock taxation. But the proposal was not adopted. In 1894 Mr. Hearn proposed to make it a rule of the Board that only sworn statements of corporations be accepted; and that in case of refusal of the corporation to make such statement, the Capital Stock Committee should assess from the best information obtainable. The resolution was referred to the Capital Stock Committee, which, strange to say, reported unfavorably upon it.

One almost irrelevant matter here begs admission. In 1874 Mr. Warner offered a resolution providing that "in the absence of reliable information as to the market or fair cash value of the capital stock and debt of any such companies and corporations, the fair cash value of the assessed tangible property may be taken as the value of the shares of such capital stock and debt." The resolution was not adopted. The next year it was again voted down. The explanation of Mr. Warner's motion may be inferred from the following facts: 1. Mr. Warner was a member of the Railroad Committee. 2. At that time the Capital Stock Committee was assessing "excess" to the railroads. 3. In 1877 Mr. Warner was chairman of the general rules committee at the time of the organizing of the new board. 4. The rules committee transferred the assessment of railroad capital stock from the Capital Stock Committee to the Railroad Committee. 5. The Railroad Committee's final report makes no pretense of having considered the value of capital stock and bonds of railroads.

Mention should be made also of the fact that the minutes of the Proceedings record letters from individuals, from a "Tax Payers' Association", from the Mayor of

³⁹*Proceedings State Board of Equalization*, 1875, p. 8; 1877, p. 10; 1882, p. 5.

Chicago, from the "Tax Investigating Committee" of the Chicago Teachers' Federation, and others, relative to the assessment of corporations. Many data no doubt have in that way been offered to the Board.

The following table, data for which are drawn from the tabulated reports of the Capital Stock Committee of the Board, speaks forcibly of the difficulties of the Board in gathering data.

TABLE I

Year	Number of companies that did not report cap. stock & debt as required by section 32	Number of companies that did not report the ass'd value of their tangible property	Number of companies to whom Board assessed "corporate excess,"	Number of companies found by Board to have no value "over and above tangible property"
1873	<i>a</i>	<i>a</i>	207	13
1874	116	52	224	100
1875	67	90	100	143
1876	179 ^b	252	87	229
1877	2	4	33	301
1878	<i>a</i>	<i>a</i>	46	369
1879	14	6	40	370
1880	10	11	29	<i>a</i>
1881	<i>a</i>	14	61	<i>a</i>
1882	<i>a</i>	<i>a</i>	91	<i>a</i>
1883	<i>a</i>	<i>a</i>	85	<i>a</i>
1884	<i>a</i>	<i>a</i>	80	<i>a</i>
1885	27	28	114	<i>a</i>
1886	26	34	148	<i>a</i>
1887	42	59	217	<i>a</i>
1888	31	54	246	<i>a</i>
1889	86	93	284	12
1890	97	91	305	9
1891	103	105	313	11
1892	78	92	322	12
1893	70	71	237	4
1894	78	86	249	14
1895	66	82	252	22
1896	28	95	251	29

a Board gives no data.

b 25 no capital stock report, 154 no debt.

TABLE I—(Continued)

Year	Number of companies that did not report cap. stock & debt as required by section 32	Number of companies that did not report the ass'd value of their tangible property	Number of companies to whom Board assessed "corporate excess"	Number of companies found by Board to have no value "over and above tangible property"
1897	114	135	273	42
1898	109	124	236	84
1899	153	187	302	93
1900	138	143	266	68
1901	88	134	328	421
1902	1004	996	1988	763 ^c
1903	944	815	1520	1104 ^d
1904	497	963	1442	1502 ^e
1905	843	977	1218	1290
1906	246	978	1832	1024
1907	977	788	1302	1234
1908	872	777	1281	1117
1909	400	750	1168	1330
1910	1076	567	2153	287
1911	491	206	930	275

^c 1504 companies held to be exempt by law; see chapter IV.

^d 1801 companies held to be exempt.

^e 2585 companies held to be exempt.

After the matter of jurisdiction and of data, next in order is the examination of the rules by which the Board assesses the "corporate excess." The revenue law provides for rules as follows:

Section 3. . . . such board shall adopt such rules and principles for ascertaining the fair cash value of such capital stock (including the franchise) as to it may seem equitable and just, and such rules and principles when so adopted, if not inconsistent with this act, shall be as binding and of the same effect as if contained in this act, subject however, to such change, alteration or amendment as may be found from time to time to be necessary by said board. . . .

On September 10-12, 1873, the Board formulated and adopted the following rules:

Resolved, That for the purpose of ascertaining the fair cash value of the capital stock, including the franchise, of all companies and associations now or hereafter created under the laws of this State, and for the

assessment of the same or so much thereof as may be found to be in excess of the assessed or equalized value of the tangible property of such companies and associations respectively, we, the State Board of Equalization, hereby adopt the following rules and principles, viz: First—the market or fair cash value of capital stock, and the market or fair cash value of the debt (excluding from such debt the indebtedness for current expenses) shall be combined or added together; and the aggregate amount so ascertained shall be taken and held to be fair cash value of the capital stock, including the franchise, respectively, of such companies and associations.

Second—From the aggregate amount ascertained as aforesaid, there shall be deducted the aggregate amount of the equalized or assessed valuation of all the tangible property, respectively, of such companies and associations, (such equalized or assessed valuation being taken, in each case as the same may be determined by the equalization or assessment of property by this Board,) and the amount remaining in each case, if any, shall be taken and held to be the amount and fair cash value of the capital stock, including the franchise which this Board is required by law to assess, respectively against companies and associations now or hereafter created under the laws of this State.

Expressed in every day language, the rules mean that the value of each corporation as a "going concern" is determined by adding together the market value of its capital stock and bonds. This computed value of the company as a "going concern" is then taken and held to be the same as the value of all of the corporation's property both tangible and intangible.⁴⁰ Next the Board determines the equalized value of the tangible property as locally assessed. Then it subtracts the amount of this value of the tangible property from the amount of the value of both tangible and intangible property, and the remainder, if any, it holds to be the amount which it is required by law to assess—that is, "value of the capital stock, including the franchise, over and above the assessed value of the tangible property."

⁴⁰This is an interesting feature of the rules, made necessary by the attempt of the legislature to adapt the old general property tax system to modern needs. The theory underlying the general property tax is, that the owning or control of property is the best index of a person's ability to pay taxes. In the case of the corporation its ability to redeem bond coupons and to pay dividends, fixes on the market the valuation of its stock. Then by this rule the value of the capital stock and the bonds is used as an index of the value of the corporation's property.

These rules were at once attacked in the courts of the State but were approved by the Supreme Court in its January term, 1875.⁴¹ And many times since then they have been reapproved.⁴² The next year the law was attacked by injunction process in the United States Circuit Court, which held the law unconstitutional. But in May, 1876, the Supreme Court of the United States reversed those decisions⁴³ and put its stamp of approval upon the Board's rules, quoted above, by declaring them to be "probably as fair as any." In the following chapter it will be seen how the Courts in their decisions have weighed the economic as well as the legal points in favor of the validity of the rules and the principles adopted by the Board.

At this point the opinion of economists is in order. Professor Seager, writing on the capital stock tax,⁴⁴ approves this method of valuation as follows:

The plan most commonly adopted is to tax the corporations themselves, while exempting their securities⁴⁵ in the hands of owners by a board of state assessors, deduction being allowed usually for real estate,⁴⁶ and sometimes for bonded and other indebtedness,⁴⁷ which in such cases usually escape taxation altogether. In its most highly developed and defensible form, it is a tax on the capital stock, whose value is determined by the prices at which its shares are selling *and* the bonded indebtedness. The aggregate value of the stock and bonds of a corporation represent its worth as a going concern from the point of view of the business community and constitute therefore the fairest basis for measuring its ability to contribute to the government, so long as property is accepted as the test of such ability.

One unwritten rule of the Board in assessing the "corporate excess" has been left out of the discussion so far. Stated baldly it is as follows: Each year the Board by resolution determines how much the local assessors of the

⁴¹Porter vs. R. R. I. & St. L. R. R. Co., 76 Ill. 561 (1875).

⁴²In 1875, 1876, 1877, 1878, 1880, 1901.

⁴³Details given in separate chapter.

⁴⁴*Introduction to Economics* (1906), page 556.

⁴⁵Stock exempt, but bonds not, by the law of Illinois (Sec. 32).

⁴⁶Also personalty by the law of Illinois.

⁴⁷Bonds are not exempt by the law of Illinois.

State, on an average, have undervalued property in returning its value. Then the Capital Stock Committee proceeds to undervalue the capital stock and bonds of corporations in the same proportion. Of course, such action is not a strict fulfilment of the requirements of the law which calls for the "fair cash value". Indeed, between fulfilling the letter of the revenue law which requires full valuation and fulfilling the fundamental principle of uniformity in the revenue article of the constitution, which necessitates a proportionate undervaluation, the situation of the Board of Equalization has been that of the proverbial man between the devil and the deep sea. The minutes of the Proceedings frequently show that conscientious members of the Board were opposed to this unwritten rule. In this they were supported by the unremitting hostility of the Attorney General to such a disregarding of their duty just because local assessors were disregarding theirs in the matter of valuation. And later, in 1887, the Supreme Court likewise sided with the strict constructionists. On the other hand, conscientious members of the Board held that the principles of uniformity, "fixed in this constitution", had claims to fulfilment prior to the claims of the letter of the revenue law. To support the rule they could cite decisions of the Supreme Court. The Capital Stock Committee in 1873 reported as follows:⁴⁸

The decision of the Supreme Court of this State heretofore made in Bureau County and in other cases, will compel the State Board in its assessments of property, to adopt as its basis for values the proportion of the actual value at which this Board finds other property to be assessed.

The case referred to by the Committee was heard by the Supreme Court in 1867. The Bureau County Board of Supervisors had assessed the C. B. & Q. R. R. Company's property at from one-third to one-half of its actual value regardless of the fact that other property was assessed by local assessors at only one-fifth to one-third its actual value. The Court held that the uniformity principle of the consti-

⁴⁸*Proceedings State Board of Equalization*, p. 48.

tution made the assessment by the Board of Supervisors invalid.⁴⁹

The Supreme Court in 1877 positively approved this unwritten rule. The validity of an assessment on an individual's property was attacked on the ground that the Board had not assessed corporations as the law required. But the Court held the action of the Board was proper, as obeying the constitutional mandate requiring uniformity rather than the literal terms of the statute; and that it could work no injustice, while "a strict observance of the statute in that respect would have worked injustice."⁵⁰

This decision would seem to make the unwritten rule vital to the validity of the operation of the Board's formally adopted written rules. Yet in 1887 when a case came up for hearing before the Supreme Court which hinged upon this very point of saving the uniformity principle by disregarding the law, the Court held opposite to what it did in the case just cited. The two cases are not identical; hence a brief statement is necessary.⁵¹ In 1886 a railroad corporation sought an injunction to restrain the collection of taxes on an assessment by the Board of Equalization. They alleged it to be illegal on the ground that the Board had assessed the property of the railroad at a trifle more than full value regardless of the fact that the local assessors had assessed property in the same township at only one-third of its full value. The Circuit Court denied the petition to enjoin and the railroad appealed to the Supreme Court. There its counsel contended that the Board "to preserve the principle of uniformity in the constitution" must assess corporation property at the same fraction of its value that local assessors assessed other property at. The Supreme Court denied the validity of such argument and affirmed the decision of the lower court. In part the Court said:

⁴⁹Board of Supervisors of Bureau Co. vs. C. B. & Q. R. R. Co., 44 Ill. 229 (1867).

⁵⁰Law vs. People, 87 Ill. 385 (1877).

⁵¹I. & St. L. R. R. and Coal Co. vs. Stookey, Collector, 122 Ill. 358 (1887).

If any wrong has been done, it was by the town assessors, and not by the State Board. The law required the State Board of Equalization to value the property at its fair cash value All this was done in substantial conformity with the requirements of the statute, yet the action of the Board is assailed . . . The appellant, in effect, says the Board should have disregarded this law because the town assessor had done so in the assessment of the other property in the two townships. This view of the matter we do not regard as sound.

But this decision seems to have been taken by the Board as a vindication of that one assessment of theirs on the railroad company that did the suing, rather than as a criticism of their use of the unwritten rule as to undervaluation. It is to be regretted that the counsel for the railroad company did not base his plea of unjust assessment on the ground that other corporations were undervalued while this particular corporation was not undervalued. That would probably have brought a more decisive opinion. In 1891 the question was up again in the Board, the strict constructionists as usual in the minority. The Attorney General was requested to give his opinion as to whether it was the duty of the Board to assess corporation property "at its fair cash value irrespective of the fact, if it is a fact, that all other classes of property in the State are assessed at a rate much less than their cash value."⁵² Two days later a counter resolution was passed asking the Attorney General whether the Board should equalize its assessments with those made by local assessors, "so that all classes of property throughout the State bear their equal proportion of taxes according to value."⁵³ The Attorney General replied that they must assess the full value and cited the Supreme Court opinion of 1887, which has just been quoted from above. But the reply of the Attorney General was not allowed to be presented⁵⁴ to the Board

⁵²*Proceedings State Board of Equalization*, 1890, p. 6, Aug. 25, Craske's resolution.

⁵³*Proceedings State Board of Equalization*, 1891, p. 7, Collier's resolutions.

⁵⁴*Idem*, p. 10, Sept. 2, Jones' motion to have Attorney General's letter read was lost.

until after the following resolution had been adopted by a vote of 14 to 6:

Resolved, That it is the sense of this Board that all property assessed in this State shall be so equalized that it shall pay its just and equal proportion of the burden of taxation.

In 1894 the question bobs up again in the minutes; the same fate is recorded. In 1898 at its special session for the revision of the revenue law, the general assembly put its stamp of approval upon this unwritten rule of the Board by providing that the Board in its assessments just as the local assessor in his should set the fair cash value down in one column to be headed "full value", and one-fifth part thereof in another column to be headed "assessed value."⁵⁵ Yet again in 1902 the Board "determined by resolution" that real and personal property had been valued no higher than 70 per cent. of its fair cash value. The inference is that the Capital Stock Committee undervalued capital stock and bonds of corporations in that same proportion before dividing by five to get the "assessed value". Otherwise the resolution as to the 70 per cent. valuation was of no use to the Board.⁵⁶ In 1905 this rule of "undervaluation" was at last incorporated in the written rules formally adopted by the Board.⁵⁷ Yet that did not down the question. In 1907 Mr. Colburn offered a resolution, to ask Attorney General Stead whether the Board had any authority to assess at 70 per cent. if it thought local assessors were so doing.⁵⁸

In closing on this point it is safe to affirm that, judging by the resolutions passed each year fixing the average rate at which property was estimated to have been assessed locally, also judging by the headings in the tabulated reports which expressly state that 40 per cent. or 50 per cent., as the case might be, is deducted from the fair cash value

⁵⁵Laws of Illinois, special session, 1898, p. 43.

⁵⁶Similar resolutions in 1903, 1905 and 1906.

⁵⁷*Proceedings State Board of Equalization*, 1905, p. 12.

⁵⁸*Idem*, 1907, p. 5, Sept. 24. On Oct. 8, Colburn withdrew the resolution.

“so as to equalize with other state property”, and judging by the later headings used in the reports from 1885 to 1898, “equalized value of capital stock and debt, etc.”, it is safe to affirm that the Board up to 1898 inclusive, used the unwritten supplement to its formally adopted rules. And the reports of the Board from 1898 to the present show compliance with the law of 1898 requiring one-fifth (in 1909 the proportion was fixed by statute at one-third) of the fair cash value to be set in a column and headed “assessed value”. But the minutes of the Proceedings relative to the resolutions determining that local assessors had valued property “no higher than 70 per cent. of its full value” (one-fifth or one-third of which is set down as “assessed value”), and the formal adoption of the rule in 1905, show that at present the Board, to “preserve the principle of uniformity” in taxation, has had to disregard the letter of the law even as amended in 1898. In fact, the United States Supreme Court, Oct. 21, 1907, held that a failure to do so was a violation of the Fourteenth Amendment.

A brief history of the Board's proceedings would not be complete without a review of the noted mandamus suit concerning the rules for assessing corporations, which was brought against the Board in 1900-1901 by the Teachers' Federation of Chicago.⁵⁹ The main points brought to issue were: 1. Could the Court compel the Board to assess certain (Chicago) corporations. 2. Could the Courts compel the Board to use the old rules rather than a new set adopted for the occasion. The following statement of the case is essentially that expressed by Justice Hand in rendering the opinion of the Supreme Court.

The case originated in a petition for mandamus, filed in the Circuit Court of Sangamon County⁶⁰ upon the relation of Catherine Goggin and Robert C. Steele, against the Board of Equalization and the members thereof (naming them), to coerce the Board and the members thereof,

⁵⁹Bd. of Eq. vs. The People ex rel Catharine Goggin et al. Opinion of Sup. Ct. filed Oct. 24, 1901. 191 Ill. 528.

⁶⁰In Nov., 1900.

forthwith to value and assess, in the manner provided by law, the capital stock, including the franchises, of twenty-three Cook County corporations, one a gas company, one a telephone, one an electric light company, and the rest street railway companies. It was alleged that the fair cash value of the capital stock, including franchises, over and above tangible property assessed to them, was \$235,000,000, and that the Board had failed and refused to value and assess, and were intending, as theretofore, to fail and refuse to value or assess the capital stock including the franchise, upon a fair cash value thereof, but intended to value and assess it in such manner as to cause said corporations, and each of them, to pay no capital stock tax.

The Board demurred to the petition's being heard. But the court overruled the demurrer and the suit proceeded, whereupon one of the members, Mr. Solomon Simon, filed answer confessing the alleged intentions. The rest of the members, severally, and jointly as a Board filed answer, claiming as follows: 1. That some of the corporations in question did not have property in Cook County as alleged on April 1, 1900. 2. That the Board of Equalization alone had jurisdiction in the matter of valuing and assessing capital stock of corporations. 3. That the Board had not refused to assess the said corporations, in that it had not yet completed its session. During the time between actions in court, the Board of Equalization on December 3, 1900, adjourned without having valued and assessed at any amount the capital stock and franchises of thirteen of the corporations in question. It did value seven of them at an amount so low, as is contended by the petitioners, as to amount, in law, to a fraudulent valuation and assessment, and therefore to no assessment at all. In arriving at the results they did, the Board had used a new set of rules. Their minutes for November 22, 1900, show that on motion of Mr. Cruttenden the established rules were abolished and new ones adopted, under operation of which capital stock was to be valued as an entirety, consideration to be given to the following: 1. Character and duration of franchise;

2. Franchise taxes or any other contribution paid to cities;
3. Highest and lowest quotations of stock and amounts of stock sold at those quotations; 4. Any other fact or condition that will assist. Thus it is evident that the bonds of the corporation were no longer to be considered in the valuation of the corporation. In the minutes for the same day it appears that the "courtesy of the Board" was extended to representatives of the corporations in question, who addressed the Board on the matter of assessing the capital stock of their corporations.

The trial court held that these new rules were not valid and that the Board should have used the established rules; also held the assessment under the new rules fraudulent. On May 1, 1901, the Circuit Court of Sangamon County rendered judgment against the Board, granting the writ of mandamus prayed for in case of the thirteen corporations not assessed and the seven held to be fraudulently assessed.

Appeal was taken by the Board to the Supreme Court and was heard at the October term. "The question was not whether the lower court had power to review the judgment of the State Board of Equalization but whether when property has been wrongfully omitted which is taxable, or fraudulently assessed at so low a rate as to amount, in law, to no assessment at all, the Court may compel said Board to perform its duty." The Sangamon County Court held that since the Board's power was that of original assessor, and not of review in the case of corporations, that the performance of the duty may be enforced by mandamus.

Justice Hand then reviews the evidence as to fraud in the assessment. Eighteen of the corporations, including the thirteen which were not assessed at all by the Board, did not make returns as directed by section 32 of the revenue law; whereupon the statements were made and returned by the assessors as required by law, and by the Auditor these were turned over to the Board of Equalization long before the petition for mandamus was filed. "Evidence shows" that the Tax Investigating Committee of the Chicago Teachers' Federation, had frequently point-

ed out to the Board, and especially to the Committee on Capital Stock, that the assessments for previous years had permitted the said corporations to escape taxation on their capital stock including the franchises. Further, it appeared from the evidence that the value of the capital stock of the thirteen companies which the Board had failed to assess in 1900 amounted to \$85,000,000; and that said companies, during the year prior to April 1, 1900, "earned a guaranteed dividend of from 6 to 36 per cent. per annum." And of the seven corporations which were assessed by the Board in 1900, the Peoples' Gas Light and Coke Company in a sworn statement of Nov. 17, 1900, had admitted property as follows:

1. Paid up capital stock.....	\$ 28,668,800
2. Funded debt	34,000,000
	<hr/>
Total.....	\$ 62,668,800
3. Assessed (full) value tangible property	15,526,785
	<hr/>
	5) \$ 47,142,015
	<hr/>
	\$ 9,428,403

Hence this property assessed according to the established rule would have had a taxable "corporate excess" amounting to \$9,428,403. But the Board had assessed it only \$450,000, by its new rules, or \$8,978,403 less than it should have assessed it. And this was not considering the fact that the company did not report the value of its stock at the actual market value, which was considerably higher. Justice Hand, reviewing the evidence, said this was a fair illustration of the Board's method with the other six. Such assessment the Court held to be fraudulent. Justice Hand settled the second issue at bar, namely whether the Courts could compel the Board to use the established rules rather than the new ones, by holding that since the Court had held that an assessment might be impeached for fraudulent

high assessment⁶¹ and that "valuation must be the result of honest judgment and not of mere will";⁶² the converse must be true, and "an assessment may be impeached where it has been fraudulently made at too low a rate." The appeal of the Board was accordingly denied and the lower court directed to issue the mandamus compelling the Board to assess the other twenty of the corporations in question by the established rules. The order was issued on November 6th. For some unknown reason the Capital Stock Committee did not comply with the order till November 20th. On that day the Committee was halted in its performance of the duty by a temporary injunction of the United States Circuit Court. But on the 22nd the Committee was allowed to finish the assessment. By this assessment the 1900 tax valuation of the corporations in question was raised about \$32,000,000.

The corporations themselves next took up the case. They refused in 1901 to pay the back taxes on the new 1900 assessment; brought suit in the United States Circuit Court after the supplementary assessments had been made; the collection of the tax on this assessment was in large part enjoined. Judge Peter S. Grosscup held that the supplementary assessment had been made under "duress", and was not on a proper basis. He decided that the assessment should be based on the capitalization of net earnings. And on this base the companies eventually paid taxes, on an additional assessment aggregating \$7,190,000 (The Illinois Court had ordered simply that the Board use the established rules and in so doing they had assessed the twenty companies an additional \$32,732,000). Including the taxes previously paid, the franchise corporations under discussion, for 1900 paid taxes on a total valuation of \$21,034,000. Judge Grosscup stated in his opinion that the valuation under his rule would approximate those made voluntarily by the Board in 1901; but he was twenty-five

⁶¹Pacific Hotel vs. Lieb, 83 Ill. 602 (1876).

⁶²C. B. & Q. R. R. Co. vs. Cole, 75 Ill. 594 (1874).

per cent. lower than what the companies paid the next year. Appeal was made by the State to the United States Supreme Court. October 21, 1907, the Court held that the injunction was valid. It was held that the State of Illinois through its Board of Equalization had not given the property of these corporations equal protection before the law. Other corporations had been assessed at one-fifth of 65 per cent. of their value; these at one-fifth of the full value. Such a denial of equality the Court held to be a violation of the Fourteenth Amendment.⁶³

A few other pertinent facts in the history of the Board's assessment of corporations may now claim admission to this article. They are drawn from the minutes of their published Proceedings and will be given in chronological order, and the reader may draw his own conclusions: I. Aug. 18, 1891, on motion of Mr. Craske, the secretary of the Board was instructed to prepare a tabulated statement of the capital stock and property of corporations that were subject to assessment by the Board, as shown by their sworn statements for the present year. II. Sept. 1, 1891, Mr. Craske moved to amend the rules relating to final committee reports so as to require the Railroad and Capital Stock Committee reports to be presented to the Board at least fourteen days before the adjournment sine die, and that those reports be open to alteration or amendment for ten days after presentation to the Board. Lost by vote of 3 to 12. Craske, Jones, Powers, for it. III. Sept. 15, on motion of Mr. Neff, Chairman of the Capital Stock Committee, the order of Aug. 18, was rescinded on the ground that it was impracticable.⁶⁴ IV. Oct. 3, 1892, Mr. Jones moved that the Capital Stock Committee make a special report on the assessment of the Pullman Company⁶⁵ showing the manner in which it arrived at the same. Lost by vote of 6 to 13. Craske, Jones, Powers, for

⁶³Raymond vs. (Chicago) Union Traction Co., 207 U. S. 20 (1907).

⁶⁴*Proceedings State Board of Equalization*, 1891, Sept. 15.

⁶⁵See Table VII.

it. Mr. Powers then moved that a day be fixed by the Capital Stock Committee for hearing other members of the Board relative to the Pullman Company's assessment. Withdrawn under agreement that such hearing would be granted.

V. Sept. 25, 1894, Governor Altgeld addressed the Board on the subject of the Pullman Company's assessment, presenting to the Board a written communication, together with exhibits relative to the value of the capital and the property of the company subject to taxation in Illinois. Referred to Capital Stock Committee.⁶⁶

VI. Oct. 23, 1901 (day before mandamus decision was handed down). Petition and list presented by a committee of the Chicago City Council received and referred to the Committee on Capital Stock. VII. Nov. 12, 1901, communication from Mayor Harrison requesting permission of the Board to allow a committee from the Chicago City Council to examine the report of the Capital Stock Committee. Laid on the table. VIII. Dec. 4, 1901, Board addressed by the general counsel of the Northwestern Railroad Company relative to assessment of the capital stock and franchise of corporations.

IX. Nov. 7, 1906, motion to revise rules so as to have Railroad and Capital Stock Committee reports lie on the table 10 days for inspection. Lost. X. Dec. 7, 1906, communication from J. Hamilton Lewis, Chicago Corporation Counsel, asking to be permitted to appear before the Board sitting as a Committee of the Whole on the assessment of Pullman and other Chicago corporations; also criticising the Board for not replying to his previous letters and for notifying three corporations of Chicago of hearings before the Board and not notifying him or the Attorney General's office.

These facts are to be kept in mind when later is considered the matter of the Board's efficiency as an assessor of corporations.

⁶⁶See Table VII.

The tabulated reports of the Capital Stock Committee of the Board are often lacking in data which a student of the inner workings of the process of taxing corporations would like to examine. The following facts are shown at times in the reports. For convenience they are numbered so as to be more easily worked into a tabulated form.

1. Name of the corporation.

2. Location; county and town or city.

3. Capital stock paid up.

3a. Asterisks used to denote the fact that certain companies did not make sworn statement as required by section 32 of revenue law.

3b. No asterisks but a row of dots, indicating probably that such statements, if made, were defective.

4. Total indebtedness, except for current expenses.

4a. and 4b., similar to 3a and 3b.

5. Market or actual value of paid up capital stock and debt as determined by the Board.

6. Capital stock and debt as equalized with the aggregate assessment of the state.

6a. Also indicating the per cent. of deduction made.

7. Total equalized value of tangible property assessed where located.

7a. Asterisks indicating no report of tangible property by certain companies.

7b. No asterisks but a row of dots, indicating probably that such statements, if made, were defective.

8. "Assessed and equalized value of capital stock, being excess of equalized value of capital stock and debt over equalized value of tangible property."

9. A separate list of the companies examined and found to have no "excess" over equalized tangible property assessment.

9a. Same facts shown by blank space in column for data number 8.

9b. Otherwise indicated.

10. Separate list of the companies examined and

found under the law to be exempt from "corporate excess" assessment.

10a. Same facts suggested by blank spaces in columns 5, 6, 6a, 7, and 8; e.g., 1875.

TABLE II

Year....	1.	2.	3.	3a.	3b.	4.	4a.	4b.	5.	6.	6a.	7.	7a.	7b.	8.	9.	9a.	9b.	10.	10a
1873..	1.	2.													8.			9b.		
1874..	1.	2.	3.		3b.	4.		4b.	5.	6.	6a.	7.		7b.	8.		9a.			
1875..	1.	2.	3.		3b.	4.		4b.	5.	6.	6a.	7.		7b.	8.		9a.			10a
1876..	1.	2.	3.		3b.	4.		4b.	5.	6.	6a.	7.		7b.	8.		9a.			10a
1877..	1.	2.			3b.				5.	6.	6a.	7.		7b.	8.	9.				
1878..	1.	2.													8.	9.				
1879..	1.	2.			3b.				5.	6.	6a.	7.		7b.	8.	9.				
1880..	1.	2.			3b.				5.	6.	6a.	7.		7b.	8.					
1881..	1.	2.							5.	6.	6a.	7.	7a.		8.					
1882..	1.	2.													8.					
1883..	1.	2.													8.					
1884..	1.	2.													8.					
1885..	1.	2.	3.	3a.					6.		7.	7a.			8.					
1886..	1.	2.	3.	3a.	3b.				6.		7.	7a.			8.		9a.			
1887..	1.	2.	3.	3a.	3b.				6.		7.	7a.	7b.	8.			9a.			
1888..	1.	2.	3.	3a.					6.		7.	7a.	7b.	8.						
1889..	1.	2.	3.	3a.					6.		7.	7a.	7b.	8.			9a.			
1890..	1.	2.	3.	3a.					6.		7.	7a.	7b.	8.			9a.			
1891..	1.	2.	3.	3a.					6.		7.	7a.	7b.	8.			9a.			
1892..	1.	2.	3.	3a.	3b.				6.		7.	7a.	7b.	8.			9a.			
1893..	1.	2.	3.		3b.						7.		7b.	8.			9a.			
1894..	1.	2.	3.	3a.	3b.						7.	7a.	7b.	8.			9a.			
1895..	1.	2.	3.	3a.	3b.						7.	7a.	7b.	8.			9a.			
1896..	1.	2.	3.	3a.	3b.						7.	7a.	7b.	8.			9a.			
1897..	1.	2.	3.	3a.	3b.						7.	7a.	7b.	8.			9a.			
1898..	1.	2.	3.	3a.	3b.						7.	7a.	7b.	8.			9a.			
1899..	1.	2.	3.	3a.	3b.				5.	6.	6a.	7.	7a.	7b.	8.		9a.			
1900..	1.	2.	3.	3a.	3b.				5.	6.	6a.	7.	7a.	7b.	8.		9a.			
1901..	1.	2.	3.	3a.	3b.				5.	6.	6a.	7.	7a.	7b.	8.		9a.			
1902..	1.	2.	3.	3a.	3b.				5.	6.	6a.	7.	7a.	7b.	8.	9.			10.	
1903..	1.	2.	3.	3a.	3b.				5.	6.	6a.	7.	7a.	7b.	8.	9.			10.	
1904..	1.	2.	3.	3a.	3b.				5.	6.	6a.	7.	7a.	7b.	8.	9.				
1905..	1.	2.	3.	3a.	3b.				5.	6.	6a.	7.	7a.	7b.	8.	9.				
1906..	1.	2.	3.	3a.	3b.				5.	6.	6a.	7.	7a.	7b.	8.	9.				
1907..	1.	2.	3.	3a.	3b.				5.	6.	6a.	7.	7a.	7b.	8.	9.				
1908..	1.	2.	3.	3a.	3b.				5.	6.	6a.	7.	7a.	7b.	8.	9.				
1909..	1.	2.	3.	3a.	3b.				5.	6.	6a.	7.	7a.	7b.	8.	9.				
1910..	1.	2.	3.	3a.	3b.				5.	6.	6a.	7.	7a.	7b.	8.	9.				
1911..	1.	2.	3.		3b.				5.	6.	6a.	7.		7b.	8.	9.				

⁶⁶In the year 1910 the Board of Equalization began to tabulate corporations in three schedules instead of two. Schedule A contains those corporations which made their returns as provided by law. Schedule B contains those that failed to comply with the law requiring returns. Schedule C contains the names of those which were found to be fully assessed by the local assessors, i. e., the Board deemed the value of capital stock and franchise and tangible property to be no more than the value assessed to the tangible property by the local assessor.

From the table given on the preceding page may be readily discovered what data were given to the Board, and what not given, in any year. It shows also how the reports of the Board have varied from time to time. For example, by consulting column "3a" it is seen that in 1885 the Board began to mark certain companies with an asterisk to indicate that they did not report their capital stock. Column "3b" shows that in many years there were reports which were defective. Again, a glance horizontally at the data furnished in the Board's published proceedings as shown in the table for the years 1882, 1883 and 1884, discloses the fact that the Board in those years reported nothing but the name, location and assessment of the corporations.

From the meager data afforded in some reports, it is small wonder that members of the Board who were not on the Capital Stock Committee should, as shown above, have tried to get the reports laid over for several days. The rules of the Board have always provided that the Capital Stock Committee's report shall lie on the table at least two days. But the suspension of the rule has been more honored than the rule. Since 1890 at only five sessions has the report lain over the whole two days. In 1891-1893, 1896, 1897, 1900-1904, 1906-1908 the rules were suspended and the report adopted as reported. In all the years once only was the report amended. That was in 1890 when \$285,000 was cut off the assessment on the Union Stock Yards because a like amount had been assessed to the Stock Yards Company by the Railroad Committee on account of the company's railroad tracks.

If the Capital Stock Committee had each year published definite information as to the corporations whose statements required by law, were lacking, or defective, and also the names of the assessors and county clerks who had failed to do their duty in the matter, as explained above, it would have been possible for other members of the Board and for outsiders interested in the matter of taxing corporations, to assist the Capital Stock Committee in overcoming the difficulties in regard to getting proper data.

Further, if the Committee had shown definitely in its tabulated reports the actual data as to the full valuation set against each corporation, and the actual deductions made in such valuation, considerable adverse criticism, especially that shown above as coming from within the Board itself, might have been avoided. Further, the study of the Board's history seems to warrant a logical conclusion that the Capital Stock Committee always has the situation under control. It does its work practically as a closed body but under cover of a diffused responsibility. And here is the place to state the fact that the Board is responsible to no one but the people. The people cannot center the responsibility for the Board's action upon any state officer. When they elect the Board it is at the general election where partisan policies are uppermost, and where at best the people inquire only into the record of the state officers. The Board of Equalization is forgotten.

The general conclusion as to the efficiency of the Board of Equalization as an assessor of corporations is reserved for the last chapter.

CHAPTER III.

COLLECTION OF CORPORATION TAXES:

"CORPORATE EXCESS" SYSTEM TESTED IN COURTS.

The collection of corporation taxes, with the exception of those from telegraph and railroad companies, is the same as from other general property taxpayers. The law provides that the local assessor shall value and assess the tangible property of the corporation, and that the assessment of "corporate excess" shall be certified by the Auditor, under direction of the Board of Equalization, to the county clerk of the county in which the corporation is located. The county clerk then extends the taxes for all purposes on that amount the same as upon the other property of the town, district, village or city in which the corporation is located.¹ Thus all the property of a corporation becomes subject to the state, county, town, district and municipal rates. It pays its general property tax to the regular collector of such taxes. However, in the case of telegraph companies, the law provides that the Board of Equalization shall distribute the "corporate excess" among the counties the same as "railroad track" and "rolling stock" valuations are distributed, that is, by giving each county such a percentage of the total "excess" as its number of miles of telegraph lines is a percentage of the total number of miles in all the counties where the company does business.² Further, the law provides that the tax shall be collected by the county collector³ the same as railroad taxes are collected. However, the taxes on wires, poles, buildings, office furniture, etc., are collected by the local collectors.

¹Revenue Law, section 108.

²*Proceedings State Board of Equalization*, 1873, p. 157.

³Revenue law, section 54.

The collection of the general property tax, levied on corporations as result of the new method instituted in 1873 for reaching intangible property, was at the start resisted in both the State and United States Courts. The constitutionality of the "corporate excess" method was tested in the State Supreme Court in 1875 and in the United States Supreme Court in 1876. Since then the attack has been upon the legality or validity of the assessments by the State Board of Equalization.

The favorite resort, at law, to resist the collection of taxes on the "corporate excess" and attacking this system in general, has been the use or attempted use of court injunctions. As pointed out by Justice Miller of the United States Supreme Court, this method, because of the long drawn out litigation involved, is detrimental to the interests of the state, but profitable to the corporation.⁴ The state often badly needs the tax money tied up by the litigation. The corporation has the "tied up" sum to use in business.

From the biennial report of the Auditor of State for the years 1873 and 1874 it is learned that the collection of the tax extended against the assessed value of the capital stock of corporations was resisted in the courts by nearly all the railroads in the state, and by many other corporations. A series of cases known as the "Tax Injunction Cases", involving all the questions at issue, were heard and decided at the January term (1875) of the Supreme Court. The Court, in the opinions which were filed on the 19th of June, 1875, sustained the constitutionality of the revenue law of March 30, 1872, and the validity of the action of the Board of Equalization under it in all particulars, except that of the assessment of the Western Union Telegraph Company, a foreign corporation.⁵

But in the meantime or immediately after these opinions were made public, many of these corporations, (including nearly all the railroads in

⁴Tax Injunction Cases of U. S. Circuit Court Illinois reviewed by Supreme Court in 1876. State Railroad Tax Cases, II Otto 585 ff.

⁵Porter vs. R. R. I. & St. L. R. R. Co. 76 Ill. 561. (1875).

the state,) procured in the Courts of the United States injunctions against the collection of the tax against their capital stock. It follows that but a small percentage of the tax levied in 1873 upon the capital stock of corporations has been collected.⁶

In fact, the United States Circuit Court in April, 1875, declared the revenue law of 1872 to be unconstitutional and issued permanent injunctions against the collection of the tax on the capital stock "excess". Three railroad injunction cases were by the State carried to the Supreme Court of the United States, where, in a notable opinion delivered by Justice Miller in May, 1876, the injunction was ordered to be dissolved. The Court ordered further that "it is essential that every case be brought within some of the recognized rules of equity jurisdiction and that neither illegality nor irregularity in the proceedings, nor error, nor excess in the valuation, nor hardship or injustice of the law, provided it be constitutional, nor any grievance which can be remedied by a suit at law, either before or after the payment of the tax,—will authorize the issue of an injunction against its collection." All this was on the ground that the maintenance of the state must not be threatened by long drawn out litigation that withholds tax money from the treasury to the detriment of the state (and profit of the corporation). In stating the general cases in which injunctions might be issued the Justice approved the rules laid down by the Illinois Supreme Court in 1864,⁷ namely, that "a court of equity should not enjoin collection of taxes except where the tax is unauthorized by law, or assessed on property not liable, where injury irreparable would be done, or a multiplicity of cases would occur." Further, the United States Supreme Court held that no injunction, preliminary or final, can be granted to stay collection of taxes until it is shown that all taxes conceded to be due, or which the Court can see ought to be paid, or which can be shown to be due by affi-

⁶Auditor of Public Accounts, *Reports to General Assembly*, vol. I, p. 106.

⁷Cook County vs. C. B. & Q. R. R. Co., 35 Ill. 465 (1864).

davits, have been paid, or tendered without demanding a receipt in full.⁸

Further, the lower United States courts were instructed to follow the construction of the Illinois statutes that was placed upon them by the Illinois Supreme Court.

A summary of what was held in the opinions of the State and United States Supreme Courts of 1875 and 1876 in sustaining the constitutionality of the revenue law will show the issues that were raised and settled in regard to the constitutionality of the "corporate excess" method of taxing corporations. In following this discussion, reference should be made to the exact wording of the constitution, which has been given in chapter I. The main points of the Illinois Supreme Court decision in 1875 were as follows:

1. The legislature has plenary power to tax as restricted by the constitution of the state and the laws and constitution of the United States.⁹

2. Article IX, Section I, of the constitution does not require that the legislature, in providing for the taxation of corporations, shall designate the precise amount which each corporation shall pay, and that this shall be the same on each corporation, without regard to the franchise value or the privileges enjoyed, nor that such taxation shall be of like character with that which may be imposed on innkeepers and others pursuing the particular vocations named. This part of the constitution only requires that the tax upon corporations shall be by general law, and the only uniformity is as to the class of corporation.

3. The mode of taxing corporations is discretionary with the legislature.

4. The assessment of property may be given to different officers.

⁸State Railroad Tax Cases, 11 Otto 585 (1876).

⁹Limitations in regard to taxing of capital stock of national banks (See chapter IV); also in regard to levying taxes which may be construed to be infringement of federal power to regulate commerce.

5. The power given to the State Board of Equalization is not a delegation of legislative power.

6. The legal property of a corporation is distinct from that of the individuals who make up the corporation. This was brought out by the plea of the corporation counsel that the corporation as a person did not own any capital stock, but that that belonged to the individual shareholders, and was properly taxable to them only. But the Court denied such argument and held that the corporation was properly taxable upon its capital stock including the franchise.¹⁰ The Court especially noted the fact that the franchise privilege of doing business under corporate organization with limited liability was a valuable privilege and justly taxable. Further, the Court held that the franchise is property and the fact is not lessened by reason of the difficulties attaching to the matter of making a just valuation of it. On this point Cooley says: "A state may tax the franchise or the capital of a corporation by such rule as it may prescribe, even though it be arbitrary."¹¹

Before the United States Supreme Court R. G. Ingersol, counsel for the appellees, argued as follows: The Constitution of Illinois places the property of corporations and individuals upon an equality. By the revenue law of 1872 corporations are denied privileges and rights accorded to individuals and hence the law is unconstitutional. The Court denied the validity of the argument. In the second case,¹² corporation counsel insisted that the assessments of the Board of Equalization under the new law were prohibited by the Fourteenth Amendment to the constitution. But the Court considered that argument as scarcely worth a reply, and declared in denial of all argument that the revenue law of March 30, 1872, violated neither the Constitution of Illinois nor of the United States.

¹⁰Citing opinion of U. S. Supreme Court, *Van Allen vs. The Assessors*, 3 Wallace 583 (1865).

¹¹Cooley cites United States Supreme Court decisions, *Minot vs. Philadelphia, etc. R. R. Co.*, 18 Wallace 206 (1873).

¹²There were three cases heard at the same sitting.

In the second place, in connection with the argument as to the unconstitutionality of the revenue law, the Board's interpretation of the law and the legality of its acts under such interpretation was also attacked. The courts decided that "capital stock" in the revenue law means not "shares of stock" either separately or in the aggregate, but all the property of the corporation, including the franchise as property. The courts also sustained the action of the Board in considering funded debt as within the meaning of the term "capital stock." Secondly, they sustained the rules adopted by the Board for the valuing of the "capital stock" thus broadened by construction. As expressed by Justice Miller the Court decided that "a rule which ascertains the value of all this by ascertaining the value of the funded debt and of the shares of the capital stock, as the basis of assessment, is probably as fair as any other" and that the method of deducting the value of the tangible property to find the "excess" is as good as any other, all modes being more or less imperfect. Minor points settled by the court at that time and since are as follows:

1. The Board is not bound to assess capital stock at what its officers report¹³ but may value it upon their own knowledge and individual judgment.¹⁴

2. Although a corporation's return for assessment is to be made on blanks furnished from the proper office, the return must be made though the furnishing of the blanks has been neglected.¹⁵

3. Held that the absence of the company's statement as to capital stock is no bar to the action of the Board.¹⁵

4. Held that the validity of the assessment is not affected by the fact that the Board did not give notice to the corporation to appear. Board not required by law to do that.

¹³Republic Life Ins. Co. vs. Pollak, 75 Ill. 202 (1874); reaffirmed in 1876, 1878, 1887, 1890.

¹⁴Quincy Railroad Bridge Co. vs. County of Adams, 88 Ill. 615 (1878).

¹⁵Pacific Hotel Co. vs. Lieb, 83 Ill. 602 (1876)

5. Held that the fact that shares are worthless does not impeach the assessment; the creditors, that is the bond holders, take the place of the stockholders.¹⁵ Even if the corporation is in the hands of a receiver its capital stock and bonds are taxable.¹⁶

6. Held that assessments by the Capital Stock Committee of the Board are valid acts of the Board.

7. Its assessment can be impeached for fraud only.¹⁷

Thus it appears that the constitutionality of the "corporate excess" method has been sustained in every particular by the courts, and the work of the Board of Equalization has been kept remarkably free from legal obstructions. In fact the Board has been strikingly well sustained.

¹⁵Pacific Hotel Co. vs. Lieb, 83 Ill. 602 (1876).

¹⁶People vs. Ward, 105 Ill. 620 (1883).

¹⁷Pacific Hotel Co. vs. Lieb, 83 Ill. 602 (1876).

CHAPTER IV.

METHODS OF ASSESSMENT OF CORPORATIONS EXEMPT FROM

"CORPORATE EXCESS" METHOD

Part 1. *Foreign Corporations, in General.*

There are certain classes of corporations that do business in Illinois which are exempt from the "corporate excess" methods of assessment. First to be considered are foreign corporations, in general. They are not amenable to this method because the revenue law includes within its provisions only those corporations "created by or organized under the laws of this State." And, as already noted, the Supreme Court in 1875 for this reason enjoined the collection of the taxes on the "corporate excess" of a foreign telegraph company.

But Illinois corporations which are owned or controlled by foreign corporations are still amenable to the law as long as they keep their Illinois franchise; although such a company might be exempt under special provisions of the law as other corporations of its special class are, as, for example, printing companies. In 1890 the Appellate Court held that it was the duty of a foreign telegraph company operating under lease the telegraph line of a domestic corporation to return to the Auditor the schedule or statement required by the revenue law of 1872. This was in strict construction of section 53 which provides that "any person, company or corporation, using or operating a telegraph line in this State, shall, annually, in the month of May return to the Auditor of Public Accounts a schedule or statement", as set forth in Chapter II. But the tax is paid not on the capital stock of the foreign holding or leasing corporation. It is paid on the capital stock of the leased or owned Illinois corporation.

The tangible property of foreign corporations is taxed

the same way that the property of like domestic corporations is taxed, (with the exception of insurance companies, the treatment of which is left for chapter five.)

Fees and license taxes of foreign companies necessarily differ somewhat from those levied on domestic corporations. Legally the franchise tax "to be or become", as Professor Seligman calls the incorporation fee, cannot be levied except by the State which creates the corporation. But the same thing is achieved in Illinois by a general law that requires each foreign corporation except banking, insurance and homestead loan associations,¹ to pay such a proportion of the incorporation fees charged to like Illinois corporations as its capital to be used in Illinois is a proportion of its total capital.

But the most valuable franchise of the foreign corporation, namely, "to do or act", that is, to extend its business, its organization, its credit and so forth, is not taxable under the present Illinois laws.

Part 2. *Banking Corporations.*

All banking corporations in Illinois are exempt from the "corporate excess" method of assessment. This exemption has applied to national banks and to State banks organized under the general banking laws, since 1872. But only since 1893 have banks organized under special laws been exempt from assessment by the Board of Equalization.

National banks are exempt from all state and local taxes upon the capital stock in the aggregate, by law of Congress.² This was done to encourage the investment of capital in United States bonds, the law being a measure passed in war time. It has not been construed as forbidding the taxation of bank shares to the stockholder. The Supreme Court of the United States in 1865 held that "a

¹Special laws apply to insurance and homestead loan companies; see Chapter V.

²Act of Congress 1864, 41st section.

tax on the shares of stock is not a tax on the bank", that is, on its capital stock, which was the point at issue.³

The act of Congress in 1864 made it necessary for the legislature of Illinois to revise the bank taxes of the State. It is of interest to note that in 1857 Illinois had taken a decisive step in the taxing of corporations directly upon their capital stock by passing a law taxing banks and banking corporations in that way. This law was repealed, however, by an act of the legislature in special session in June, 1867. Seeking to prevent the escape of the capital stock shares from taxation, the legislature provided for a collection of taxes on the shares "at the source"—"the stockholders in such banks and banking associations shall be assessed and taxed on the value of their shares of stock therein in the county, town or district where such banks or banking association is located, and not elsewhere, whether such stockholders reside in such town, county or district, or not." Provision was made that the value of the capital invested in real estate, which was taxable as real estate, should be deducted from the aggregate value of the capital stock before the value of each share was assessed to the stockholders. Each bank was required to keep in its office, subject to inspection of the tax officers, at all times, a full and correct list of the names of, and residences of, and number of shares held by, its several stockholders. Further, each bank was required to retain so much of the dividends belonging to the stockholders as would be necessary to pay the general property taxes levied on the shares of stock, until it should be made to appear that the taxes were paid, the tax collector even having authority to sell the shares of those who refused to pay the tax.

This law was attacked in 1870 by a Mr. Dows of New York City, who carried a case to the United States Supreme Court asking that the collection of the taxes on a State bank in Chicago be enjoined on the ground that the

³U. S. Supreme Court, *Van Allen vs. The Assessors*, 3 Wallace 383 (1865).

tax was illegal in that the situs of his shares of stock was at his New York residence. But the petition was denied. In 1871 and 1872 the United States Circuit Court did enjoin the collection of taxes on national bank shares, but the United States Supreme Court in 1874 dissolved the injunction and affirmed the validity of the law.⁴ The case came up under the provisions of the revenue law of 1872, which, however, were, for national and state banks, the same essentially as those of the law of 1867. At one or two points the law was changed. No deduction was allowed for the value of capital invested in real estate, in determining the value of shares of stock in state banks. (National banks by law can hold no such investments.). But in 1903 such provision for deduction was restored to the revenue law.⁵ Further, the law of 1872, section 35, provides that the shares of stock of national banks in other states held by stockholders in this state shall not be required to be listed under the provisions of this act. They would otherwise be listed under the provision for scheduling personal property.

As to tangible property, the revenue law of 1872 exempts national banks from the rules laid down in section 30 for the listing of the property and business of banks; but section 13 provides that in all cases where assessment is not specifically provided for, the personal property shall be assessed where the business is carried on.

The law of 1867 operated upon state banking corporations the same as upon national banks. The capital stock tax for the year 1867 was, by an emergency clause in the act, made void and the provision for taxing shares of stock to the stockholders put into immediate effect. How well this change worked may not be proved but may be strongly suggested by one or two statements. First, one of the first acts of the Board of Equalization in 1867 was to investigate the assessment of bank stock. The Com-

⁴Merchants Nat'l Bank vs. Tappan, 19 Wallace 501 (1874).

⁵Laws, 1903, p. 294.

mittee on Personal Property reported that such shares of stock were assessed all the way from full value down to one-sixth of full value; further that out of a total of \$11,500,000 of such capital in the State only \$2,000,000 was assessed to the stockholders. Second, two years later in the Constitutional Convention it was proposed to put a clause in the constitution commanding the legislature to tax "the actual paid up capital of any banking association in the same manner as other property", that is, to return to the law of 1857. In the debate, Mr. Forman said:

I imagine it is well known to every gentleman upon the floor that nearly all the banking capital of the State is now exempt from taxation. I am inclined to think the only way to subject it to taxation is by placing some such section as this in the constitution.⁶

But the clause did not go in. It was left to the discretion of the general assembly. And in 1872 when the general revenue law was enacted state banks, organized under the general banking laws, were not made amenable to but made exempt from the operation of the capital stock tax by the "corporate excess" method, and the law of 1867 in regard to taxing the shares in the hands of stockholders was retained as section 35 of the revenue law. Later, in 1893, the law was amended so as to exempt also state banks that were organized under special laws. But by a mistake in not completing the revision, the law left such bank stock not only exempt from assessment by the Board of Equalization but by the local assessors as well. This was pointed out by the State Auditor in 1895 in a lengthy report to the general assembly. Briefly the case may be stated as follows. Section 35 as shown above, provides that national bank shares of stock and the stock of banks organized under "the banking laws of this State", shall be taxed to the stockholders. But the stock of banks enjoying special charters could not be brought under that section because of a certain clause in section 3 of the same law. In that section, the law, up to 1905, provided as follows:

Debates and Proceedings of Constitutional Convention, v. 1685.

Provided, that in all cases where the tangible property or capital stock of any company or association is assessed under this act, the shares of stock of any such company or association shall not be assessed or taxed in this state.⁷ This clause shall not apply to the capital stock or shares of capital stock of banks organized under the general banking laws of this state.

Commenting upon this the Auditor said: "It will be observed that the clause first above quoted exempts the shares of stock of banks organized under special charter from assessment and taxation." If the case had been tried out in the courts no doubt such stock would have been found to be assessable by the local assessor, for the courts have always held to a very rigid construction of the exemption clauses in the revenue article of the constitution. And no semblance of an exemption of property of such a sort is provided for in the constitution. However, the legislature in 1905 remedied the defect by including banks organized under special laws within the provision of the last clause, or sentence, of the revenue law quoted above.

Of course strictly according to the definition of corporation taxes, the tax on bank shares is not a corporation tax, but is a tax rather upon the property of the owners of the stock. But if the Illinois method of "collection at the source" is properly enforced it amounts to the same thing. It was evidently so intended, else why the exception of bank corporations alone in 1872, from the assessment by the Board of Equalization. One possible reason for such exception is not that the capital stock should not be taxed to the banking corporation, but simply that both state and national banking corporations should be taxed by the same method.

In regard to the tangible property taxes of state banks little space is accorded in this study, as it is a subject for treatment under the general property tax rather than under corporation taxes. The revenue law provides as follows:

Sec. 30. Every bank (other than a national bank),

⁷This clause, no doubt, was intended for the shares of such corporations only as were assessed by the Board of Equalization; for it is a proviso to the section that gives such power to the Board.

banker, broker or stockjobber, shall at the time fixed by this act for listing personal property, make out and furnish the assessor a sworn statement showing:

First—The amount of money on hand or in transit.⁸

Second—The amount of funds in the hands of other banks, bankers, brokers or others, subject to draft.

Third—The amount of checks or other cash items, the amount thereof not being included in either of the preceding items.

Fourth—The amount of bills receivable, discounted or purchased, and other credits due or to become due, including accounts receivable, and interest accrued but not due, and interest due and unpaid.

Fifth—The amount of bonds and stocks of every kind and shares of capital stock of jointstock or other companies or corporations, held as investment or any other representing assets.

Sixth—All other property appertaining to said business, other than real estate (which real estate shall be listed and assessed as other real estate is listed and assessed under this act).

Seventh—The amount of all deposits made with them by other parties.

Eighth—The amount of all accounts payable, other than current deposit accounts.

Ninth—The amount of bonds or other securities exempt by law from taxation, specifying the amount and kind of each, the same being included in the preceding fifth item.

Thus it would appear that banking corporations are not necessarily favored by their exemption from the assessment by the Board of Equalization; for the corporation which is assessed by the Board is assessed upon such part of its capital stock value only as is not covered by the assessed value of the tangible property, but the banking capital is taxed in the form of money and credits and in addition the dividends are levied upon to pay the shareholder's tax on the shares if any do not pay up.

In the actual assessment of bank shares the same laxness prevailed for a long time as exists in the local assessment of all other personal property. The Illinois Bureau of Labor Statistics in 1894 in its study on taxation, page 32, gives a list of the valuations of bank shares which are

⁸Down to 1894 greenbacks were held to be untaxable; Congress in that year made them taxable.

listed in 55 counties in 1893. (45 counties reported no such property.) Cook county with a population of 1,191,922 reported state and national bank shares to the amount of \$357,353; while the other 54 counties with a population of 1,643,298 reported \$3,347,411. Cook county reported \$.30 to a person; the other counties reported \$2.03 to the person of national and state banking stock shares. Further, it is shown as computed from commercial statements,⁹ that the values of Cook County bank stock of the kind mentioned was not \$357,353 but was \$56,394,350. Conceding that bank stock is entitled to the same undervaluation as other personalty was enjoying at the time or about 80 per cent. (the Bureau of Labor Statistics makes no such concession but in fairness it must be made) —conceding this, the capital stock shares of Cook county for 1894 should have been at least \$11,278,870, which is \$10,121,517 more than what was actually reported. Again, the Bureau gives a table for eighteen state and eighteen national banks of Cook county whose assessment in 1893 after being equalized by the Board of Equalization amounted to only \$7,744,903; while the commercial value was \$59,732,600. An 80 per cent. deduction from that leaves \$10,946,540, or an undervaluation of \$3,201,437 on the property of the thirty-six banks.

A Report on the Taxation and Revenue System of Illinois prepared for the Special Tax Commission of 1910, shows the recent results of the assessment of bank shares to be somewhat different from that shown by the report of the Bureau of Labor Statistics in 1894. This report states:

In comparison with the assessments of other bonds and stocks, the assessment of shares of stock in the State and national banks appears to be relatively high, and shows a noticeable increase during the past ten years. Special provisions of the law apply to the assessments of banks. Before 1901, all State and private banks were required to submit detailed statements of their moneys, bills receivable, deposits, etc., while the shares of national banks were assessable under the general provisions of the revenue law. Under legislation of 1901 and 1903, however, shares of incorporated State and national banks are now assessed where the bank

⁹Of March 5, 1895.

is located, and collected by the banks from dividends due the stockholders. The value of the shares is determined by deducting from the value of all the shares of capital stock the assessed value of real estate owned by the bank in the county where the bank is located.

The assessment of bank shares shows a marked decline from 1873 to 1898; and a notable increase in 1899 at the time the rule for one-fifth valuations went into effect. In 1901 under the new law for the assessment of shares of state banks, the assessed valuation increased about five times that for 1900; but in 1902 this dropped to about the figures for 1900. Since then there has been a considerable increase,¹⁰ and with the change to the rule of one-third valuations, in 1909, another marked increase to \$44,216,278.

Complaints have been made to the Special Tax Commission, that bank shares are assessed higher in proportion to their value than real estate or other property. On the other hand, the Illinois Tax Reform Association has claimed that the assessment of bank shares in Cook County is inequitable, and discriminates in favor of certain banks.¹¹

Part 3. *Business Corporations Exempt by Special Provisions*

Besides all foreign corporations and all banking corporations of the State, there are several other classes of corporations which are exempt from the "corporate excess" method of assessment. These are "companies or associations organized for purely manufacturing and mercantile purposes, or for either of such purposes, or for printing, or for the publishing of newspapers, or for the mining and sale of coal, or the improving and breeding of stock",¹² and homestead loan associations.¹³ Such exemption has been for the encouragement of capitalistic development of the resources of the State. The financial history of many other states would show that this idea of lessening the tax burden to invite capital, is a common idea. From the following summary it may be seen that

¹⁰In 1908, Bank Shares in Cook County were assessed at \$16,099,200, and for the entire state at \$22,698,445.

¹¹John A. Fairlie, *A Report on the Taxation and Revenue System of Illinois*, 1910, pp. 50-51.

¹²Exempt by law of 1872, as amended in 1879, 1893, 1905.

¹³Exempt by law of 1879 as amended in 1887, 1891, 1895.

many states go further than Illinois by exempting certain corporations from any general taxes whatever.¹⁴

Alabama. Cotton and woolen manufactures, five years. Laws 1893, chap. 383. Manufacturers with \$50,000 invested, ten years. Laws 1897, chap 378.

Arizona. \$300,000 beet-sugar plant, nine years. Revised statutes, 1901, sections 4062-4067. Canaigre manufacturers, ten years. Laws of 1895, chap. 77. Irrigating canals and reservoirs, fifteen years. Laws 1899, chap. 15. Railroads, ten years. Laws 1899, chap. 68. Water storage for generating electricity, nine years. Laws 1903, chap. 27.

California. Fruit and nut trees, and grape vines, four and three years respectively. Constitution, article XIII, sec. 12¾, amendment adopted Nov. 6, 1894.

Idaho. Mining claims not patented, irrigating ditches, and water rights if water is not sold or rented, no time limit. Laws 1903, page 73.

Louisiana. (Exemption from parochial and municipal taxation) Capital, machinery, and property employed in mining and the following enterprises: textile fabrics, yarns, rope, cordage, leather, shoes, harness, saddlery, hats, clothing, flour, machinery, articles of tin, copper and sheet iron, agricultural implements, furniture and other articles of wood, marble or stone, soap, stationeries, ink and paper, boatbuilding, fertilizers and chemicals, providing five hands or more are employed in each factory, ten years from January 1, 1900. Constitution of 1898, section 230.

Exemption from all taxation: railroads begun after May 12, 1898, and completed before January 1, 1904, (if not aided by local divisions), ten years from completion. *Idem*.

Mississippi. Manufacturing enterprises, ten years. Laws 1896, chap. 64.

New Mexico. Manufacturing enterprises, six years. Laws, 1897, chap. twenty-four. Tanning factories, six years. Laws, 1899, chap. 15.

New Hampshire. Manufacturing enterprises may be exempted by vote of town, for ten years. Statutes, 1901, page 204.

Oklahoma. Cotton manufacturers, ten years. Laws, 1899, chap. 18.

Rhode Island. Same as New Hampshire. Laws, 1899, chap. 18.

South Carolina. By vote of city or town manufacturing enterprises, mines and quarries may be exempted for five years from all but school taxes. Constitution of 1895, article VIII, sec. 8.

Utah. Portland cement manufacturers, five years. Laws, 1890, chap. eighteen.

Vermont. Manufacturing enterprises, mines and quarries may be exempted for ten years by vote of town. Laws, 1898, chap. 14.

¹⁴From "Encouragement to Industry by Exemption from Taxation" by John Burton Phillips, in the *Quar. Jour. Econ.*, Nov.-Dec., 1904.

Wisconsin. Zinc manufacturers three years.

Wyoming. Beet-sugar factories, ten years. Revised statutes, 1899, section 1762.

Even if the legislature thought it advisable to exempt any such Illinois corporations from all taxes on their general property, as it has indeed in times past exempted them from taxes on their capital stock, it would be illegal to do so under our present constitution. It was proposed in the constitutional convention of 1870," that for the purpose of encouraging manufacturers in this State, there ought to be a clause in the constitution exempting all manufacturing companies from taxation by all laws of this State, for the term of five years after the adoption of the constitution by the people."¹⁵ On the other hand there was a proposal to put a clause in the constitution prohibiting the legislature from exempting any corporation from taxation.¹⁶ Neither proposal actually found its way into the constitution, although the latter practically did so. The constitution on exemptions is as follows:

Article IX, section 3. The property of the State, counties, and other municipal corporations, both real and personal, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation; but such exemptions shall be only by general law. . . .

It may be of interest to follow the historical development of the exemption of capital stock of certain corporations from the "corporate excess" method of assessment by the Board of Equalization. The first general assembly at its regular session in 1871 investigated the matter of taxing manufacturers. Fifteen hundred circular letters were sent out to the manufacturers asking each to state the amount of his or its capital stock, and output of goods; further, to state how the personal property tax bore on his business as compared with other branches of trade;

¹⁵*Debates and Proceedings of Constitutional Convention*, p. 190, Jan. 5, 1870.

¹⁶*Idem*, p. 221, Jan. 19, 1870.

and to state what changes he would suggest in the mode of assessment. Only one hundred and thirty-four replies, or about one out of eight, were received. Capital to the amount of \$14,000,000, and output of goods to the amount of \$23,000,000 were reported. Many refused to reply because they did not wish to make known their capital stock. The Committee, however, recommended... "...Of this great interest, yet in its infancy,...it becomes us as representatives...to see to it that no laws are passed which shall be oppressive...and that every encouragement be given to manufacturers, so that capital may flow into the State." But nothing came of this recommendation. On the contrary, at its special session in 1872 this same assembly enacted the revenue law providing for the "corporate excess" system and did not exempt manufacturing companies from assessment thereunder.

In 1875 the legislature amended the law relative to the assessment of corporations by the Board of Equalization so that

In assessing companies and associations organized for purely manufacturing purposes, or for printing, or for publishing of newspapers, or for the improving and breeding of stock, the assessment shall be so made that such companies and associations so organized shall only be assessed as individuals under like circumstances would be assessed, and no more; and such companies shall be allowed the same deductions as are allowed to individuals.

Dispute at once arose in the Board of Equalization as to whether the amendment was intended to exempt such companies from their jurisdiction. A motion to that effect was indefinitely postponed, and later at the end of the session a motion to strike all such companies from the report of the Capital Stock Committee was lost. Seventy-four companies, the names of which would indicate that they were organized for the purposes mentioned in the amendment, were listed in the report. Some of them were assessed and some were not even valued. In 1876 the Board's report shows again the same evident difference as to the interpretation of the amendment. In 1879 the

legislature revised the wording of the amendment so as to put the assessment of those corporations organized for the above named purposes distinctly in the hands of the local assessors.¹⁷ The Attorney General being asked by the Board to give his opinion, interpreted the law to mean that since certain banks had in 1872 been exempted from the jurisdiction of the Board, so now these classes of corporations were properly exempted. There could be no question as to validity of the law.¹⁸ The local assessors would, he argued, be required to assess the capital stock as well as the other personal property and the real estate.¹⁹ A majority of the Capital Stock Committee in an elaborate argument attempted to show that the Attorney General was mistaken in his construction of the law, especially in regard to the local assessor's power of assessing the capital stock of a corporation. He might assess the shares of stock held by the stockholders, but not the capital stock of the corporation, for no provision was made in the revenue law for anyone to assess capital stock in the aggregate, except the Board of Equalization. But the Board for once overruled its Capital Stock Committee and voted not to assess such corporations.

In 1893 companies organized for the purpose of mining and selling coal were included in this exemption from assessment by the Board of Equalization by another amendment to the revenue law of 1872. In 1903 a committee from the Illinois Manufacturers' Association appeared before the Board with the plea that mercantile corporations not being exempt from assessment on capital stock by the Board, were greatly handicapped; further that simply because mercantile corporations were unknown in 1879, was the only

¹⁷Laws of Illinois, 1879, p. 251.

¹⁸Held valid later by Sup. Ct., *Coal Run Co. vs. Patrick Finlen*, 124 Ill., 66 (1888), and in other cases.

¹⁹Attorney General Jas. K. Edsall, letter, in *Proceedings of State Board of Equalization*, 1870, p. 6.

reason why at that time such corporations had not been included in the amendment to the law; further that there is a fundamental difference between public service corporations and mercantile corporations;²⁰ further that to tax mercantile corporations on capital stock and not to tax the capital of unincorporated mercantile houses and foreign corporations doing such business, was an unjust discrimination and would retard the commercial growth of the State. Of course the Board could give no relief. But in 1905 the legislature granted them the supposed relief by again amending the revenue law of 1872.²¹ The law went even further than to amend sections 3, 32, and 108 so as to exclude the capital stock of corporations organized "for purely manufacturing or mercantile purposes, etc.", from the assessment of capital by the Board of Equalization, and also amended section 1 of the revenue law so as to expressly exempt such capital stock from any assessment whatever. The act became law without the signature of the Governor. This latest phase of tax exemption of capital stock has recently been passed upon by the Supreme Court. A coal mining company in 1907 was assessed on its capital stock by a local assessor. It resisted collection of the tax as being illegal under the terms of section 1 of the revenue law amended as above indicated. But the Supreme Court held that the constitution gives the legislature no power to exempt property of that kind.²² It has repeatedly held that it is constitutional for the legislature to provide (1) that the Board of Equalization shall assess the capital stock of certain classes of corporations, and (2) that it shall not assess the capital stock of certain other classes of corporations. And now this latest decision puts the assessment of the capital stock in the hands of the local assessor. It is his duty to assess the capital stock and franchise value of any corporation

²⁰See Ely, *Outlines of Economics*, p. 647, on this point.

²¹Laws of Illinois, 1905, p. 355.

²²Cons. Coal Co., Appellant, vs. Miller et al, 236 Ill., 149 (1908).

which by reason of the fact that its charter makes it a "purely manufacturing or mercantile, printing, publishing, coal-mining or stockbreeding" concern, is exempt from the jurisdiction of the Board of Equalization. Thus the contention of Attorney General Edsall in 1879 finds judicial recognition in 1908. That from 1879 to 1908 these corporations, because exempt from the "corporate excess" method of assessing capital stock, had been considered to be taxable on tangible property only, is evidenced by the facts and theories which we have seen brought before the Board by the agents of the mercantile associations. Further, the Auditor of Public Accounts in 1895, commenting upon this very point, said:

By this clause a large amount of dividend-paying capital which is invested in various enterprises throughout the State is freed from the burden of taxation, while the small holdings of the toiling masses whose labor makes the investment of such capital profitable are not allowed to escape the eye of the assessor. I would recommend this clause be repealed or greatly modified.²³

The legislature, as we have seen, did not repeal nor modify, but instead added to the exemption. And now though the latest decision of the Supreme Court does modify it radically, yet the practical difficulties remain. They are those that were pointed out by the Capital Stock Committee in 1879 when they demurred to the opinion of Attorney General Edsall. The legislature has not provided the assessor with power to get statements from these corporations relative to their capital stock, debt and so forth. Further, the local assessor in order to determine whether he or the Board of Equalization is to assess the capital stock of a corporation, must see the charter or articles of incorporation. For the Supreme Court has held that not the business which a corporation can be seen to be doing, but the "purpose for which it was organized" as shown by its charter, is the test of whether any given corporation is or is not to be assessed by the Board.²⁴ A reference to

²³Auditor's Report to Gen. Assembly, 1895, page viii.

²⁴Distilling & Cattle Feeding Co. vs. People, 161 Ill. 101 (1896).

the pages of the Board's reports will show that many companies are assessed whose titles might suggest that they were corporations of the exempted classes. On the other hand certain corporations which we would expect to find on the list are absent, as for example, Swift & Co., Armour & Co., and many others. The character of the charter rather than the character of the business done by the corporation, has been the deciding test. Common observation of the everyday facts in regard to the ultra vires business done by corporations, is enough to convince anyone that to decide the method of taxing a going concern solely by the wording of a charter which may be outgrown, which may be only on the face of it "purely manufacturing or mercantile, etc.", is to say the least, a poor rule to use.

It is not possible from the present available information to make even an estimate of the extent to which, from 1879 to the present, capital invested in such enterprises as these has been exempt from taxation on capital stock. Not even the number of corporations doing business in the State during a given year may be learned from the government archives. In 1901 a law was passed requiring annual reports from all corporations, but it is not enforced. To 1909 the records of the Secretary of State show that 70,000 corporations have been chartered in this state.²⁵ The Board of Equalization in 1902, 1903, and 1904, published in their Proceedings a tabulated list of all those corporations which they found to be exempt from their jurisdiction. There were 1504, 1801 and 2585 respectively in the three years. In 1903 the Board also tabulated each one's authorized capital stock. The total for 1801 companies is no less than \$283,006,680. This is the par value only. It is safe to assume that those companies whose stock was above par more than offset those whose stock was below par. And the total sum of capital that was not taxed under the "corporate excess" method in that year no doubt would be enormously larger if we might know what the capital stock

²⁵Letter from Secretary of State; April 23, 1909.

was of the great number of corporations that did not report at all to the Board. If only one-fourth of the corporations that have been chartered in this State are still doing business, there must have been ten thousand corporations in 1903 which might have been added to the list of 1801 published by the Board. In the following table are some of the corporations that appear on the list.

N. Y. Biscuit Co.....	\$10,000,000
N. K. Fairbanks Co.....	2,000,000
Todd Cotton Harvester Co.....	2,000,000
Spring Valley Coal Co.....	2,500,000
U. S. Sugar Refining Co.....	2,000,000
•Western Electric Co.....	15,000,000
American Biscuit & Mfg. Co.....	10,000,000
Chicago, Milwaukee, Inland Lake Traction Co.....	50,000
Mathews Humane Stock Trans. Co.....	2,000,000
Lyon Cypress Lumber Co.....	2,000,000
Inland Steel Co.....	2,000,000
Illinois Steel Co.....	5,000,000
Gottfried Brewing Co.....	1,000,000
Chicago Western Elevated R. R. Co.....	5,000,000

The above corporations were not taxed a penny on their capital stock. But laundry companies, livery companies, paving companies, restaurant companies, teaming companies and many others to the total number of 1104 were taxed on their capital stock. It must be apparent to the reader that the present laws which exempt certain classes of corporations from the "corporate excess" method of assessment have produced a situation of gross inequality among corporations of practically the same classes. And it would appear that the larger corporations have an advantage over many of the smaller ones.

A more defensible case remains to be discussed. In 1879 the general assembly enacted a general act for the incorporation of homestead loan associations on the co-operative plan. Until 1891 these were assessed by the Board of Equalization. But in 1887 and in 1891 the law

was amended²⁶ so as to exempt their stock from taxation.²⁷ In 1891 the Board of Equalization began to omit the assessment of their capital stock. But the Supreme Court in 1894 declared the exemption to be unconstitutional²⁸ and the legislature made another attempt to accomplish the desired end in 1895. Instead of distinctly exempting homestead loan stock shares, they revised the method of listing and valuing such stock in a way that practically leaves the capital stock exempt. Sections 27, 28, and 29 of the revenue law of 1872 make provision for the listing of credits; to these sections the legislature added sections 29a, 29b, 29c, and 29d. The sections are as follows:

29a. The stockholders of every mutual building, loan and homestead association for the purpose of building homesteads and loaning money to the members thereof only, whether such association is organized under the laws of this state or of any other state or territory of the United States, shall list for taxation with the local assessor where such stockholders reside, the number of shares of stock of such association owned by each of them respectively and the value thereof on the first day of April in each year, and the same shall be assessed against such stockholders and the taxes thereon collected in the same manner as on other personal property.

29b. The shares of stock of all stockholders residing without this State of such associations shall be assessed by the local assessors where such associations are located, and, for the purpose of collecting taxes thereon, a lien is hereby created upon such stock.

29c. In determining the value of such stock for the purpose of taxation the value of the real estate owned by such association shall be first deducted from their assets and such real estate shall be assessed in the manner now provided by law.

29d. The shares of stock and property of every such mutual building, loan and homestead association shall be assessed as herein provided and not otherwise.

This is the law at present. In 1901 the following

²⁶Laws of Illinois, 1887, p. 131; laws of Illinois, 1891, p. 89.

²⁷"and all money paid to such corporation, being at once loaned out and placed into taxable property, and the shares of stock and notes provided for in this act, being simply evidence as to where such money has been placed, therefore such stock and notes shall not be subject to taxation."

²⁸People's Loan & Homestead Ass'n vs. Keith, 153 Ill., 609 (1894).—"The notes and mortgages are credits belonging to the corporation."

proviso was annexed: "Provided that no stock of such association while loaned upon by and pledged as security to the association issuing it, to an amount equal to the par value of such stock, shall be subject to assessment." But the Supreme Court held this was unconstitutional.²⁹

In 1902 the Board of Review of St. Clair County assessed the notes and mortgages of the St. Louis Loan & Investment Co. The company appealed to the Auditor, who as required by section 78 of the revenue law of 1872, certified the facts to the Supreme Court. It was held by the Court that the law of 1895 was valid; and "where this method has been followed the Board of Review has no power to also assess notes and mortgages taken by the association for loans",²⁹ because the real estate was taxed, and in determining the value of the capital stock, pursuant to assessing each share's value to the stockholders, only real estate was deducted; and hence loans and mortgages were included in the value of the shares. As the Supreme Court has construed the law, it appears that all the homestead loan corporations pays is a tax on its real estate. Its other property, which consists of capital stock, notes and mortgages, is taxed to the individual shareholders, in the form of a tax upon shares of capital stock.

²⁹In re St. Louis Loan & Investment Co., 194 Ill. 609 (1902).

CHAPTER V.

LICENSE AND EXAMINATION FEES AND "RECIPROCAL TAXES".

In addition to the taxes on property locally assessed and on the capital stock assessments by the State Board of Equalization, some revenue is received from organization and examination fees on corporations, and from fees and special taxes on insurance companies.

Part 1. *Corporation Fees.*

Before 1870, such registration and incorporation fees as were collected from corporations were retained by the Secretary of State or (after 1848) the Auditor of State. The Constitution of 1870, however, provided that all fees payable to any of the executive officers should be paid into the State treasury. The revenue law of 1872 authorized the Secretary of State to make the following charges:

Granting license.....	\$1.00
Filing articles of association, incorporation or consolidation..	\$1.00
Issuing certificate	\$1.00

With these small fees, the revenue was not important, reaching a maximum of \$33,587.68 for the period 1890-92.

In 1893 a general incorporation fee of \$25 was imposed; and the revenue from corporation fees during the next biennial period more than doubled (to \$74,054.02). In his report for 1894, the Secretary of State recommended that the incorporation fee should vary with the amount of capital stock; and the general assembly of 1895 passed an act establishing a sliding scale of charges, which is still in force.

The general law for the organization of corporations (except homestead loan associations, religious associations or corporations, and corporations not for pecuniary profit)

provides that the following fees shall be paid to the Secretary of State as incorporation fees:

If capital stock is \$2500 or less.....	\$25.00
If capital stock is between \$2500 and \$5000.....	50.00
For each additional \$1000 of capital stock over \$5000.....	1.00
For the certificate of complete incorporation.....	1.00
For an increase of capital stock, for each \$1000.....	1.00

Thus for example the fee to the state for a million dollar corporation is \$1,046. An increase of capital stock of \$100,000 would cost another \$101.¹

In addition to the fees from Illinois corporations, the law requires companies organized in other States (except banking, homestead loan, insurance, and railroad and telegraph companies whose lines had been built in Illinois previous to 1899) to pay the same fees as if they had organized under the laws of Illinois, upon such a proportion of their capital stock as is represented by their property in the state. The fee is determined by the Secretary of State by a consideration of the sworn statement required of the corporation as to the proportion of its capital stock that is to be represented in Illinois by its property and business. For example if a New Jersey corporation with a capital stock of a million dollars aims to use one-tenth of its capital in Illinois, it must pay a fee equal to one-tenth of the \$1046 fee above computed for a million dollar Illinois corporation. In 1907-1908, the Secretary of State collected \$78,421.86.

Corporations not for pecuniary profit pay an organization fee of \$10, and \$1 for certificate with seal. Homestead loan associations, in addition, pay a \$2 fee for filing their annual reports with the Auditor, also the expenses and compensation of the Auditor or his deputy for examination at least once a year. Foreign corporations of this kind at the time they file application for the privilege of doing business in the State must pay \$50, and also \$25 for the certificate of authority and \$25 for its annual renewal.

¹Hurd's Revised Statutes, 1908, p. 1076.

They must also pay to the Auditor or his deputy, "his reasonable compensation and expenses" as fees for the examination of the business.²

State banks are required to pay the bank examiner \$10.00 per day and 25 cents mileage, and also \$5.00 for filing the quarterly report. Savings banks pay an organization fee of \$5.00; and, if their funds exceed \$100,000, their proportionate assessment to maintain the state banking department.

Such license and examination fees are collected automatically when the permits, licenses or certificates are issued. The increased corporation fees imposed in 1895 brought a considerable revenue to the state; and at the same time are said to have acted to prevent the incorporation of fraudulent concerns. For the biennial period 1894-6, the collections were \$178,464.62, considerably more than twice that for the preceding two years. For 1896-8, the collections again more than doubled, to \$388,529.26; and for 1898-1900 increased to \$625,425.79. Since then the changes have been more gradual; and for the biennial period 1906-08, the collections from corporation fees were \$815,425.89. This amount compares favorably with the revenue from organization fees from corporations in other States. But it is small in comparison with the revenue of a number of the eastern states from special taxes levied annually on corporations, based on capital stock, earnings or dividends. Moreover, the assessment of capital stock of Illinois corporations by the State Board of Equalization is not of sufficient amount to produce any large revenue either for the state or local authorities.

Part 2. *Insurance Companies: Net Receipts and "Reciprocal" Taxes.*

Domestic insurance companies for pecuniary profit as has been shown are taxed the same as other corporations,

²Hurd's Revised Statutes, 1908, pp. 549, 553; Laws of Illinois, 1893, p. 86; 1903, p. 129.

on their tangible property and their "corporate excess". Fraternal benefit societies and societies operating on the assessment plan and mutual fire companies, have no capital stock to be taxed. Sec. 13 of the revenue law provides that

the personal property of...insurance companies... and companies not specially provided for in this act, shall be listed and assessed in the county, town, city, village or district where their business is carried on, except such property as shall be liable to assessment elsewhere in the hands of agents.

This means that insurance companies like individuals must, in compliance with section 25 of the revenue law, list for local assessment all safes, office furniture, and other such property, all bonds and stocks, shares of stock of foreign corporations, money and credits, and franchises. However an exception is to be noted in the case of domestic life insurance companies. In 1905 section 13 of the revenue law was amended as follows:

In computing the taxable property of life insurance companies organized under the laws of this State, the value of the real property on which the company pays taxes shall be deducted from its net admitted assets above liabilities, as testified and shown by the latest report of the Insurance Superintendent, and the remainder shall be the amount of the personal property for which the company shall be assessed.

It was provided that this law should not apply to fraternal companies. The writer is of the opinion that the above amendment, whether just and politic or not, is clearly unconstitutional; for in deducting liabilities it provides for an exemption of property from taxation that is not authorized in the constitution. In fact an exemption which on its face seems far more justifiable, has recently been declared invalid upon the ground that it was an exemption that the constitution of Illinois makes no provision for. At the same time that the above amendment was passed, the general assembly also amended section 2 of the revenue law, which is the section that exempts certain kinds of property, by adding to the section an additional clause, as follows:

Eleventh—All the money collected and on hand within this State of every kind and nature of fraternal beneficiary societies and the subordinate lodges thereof, which are organized and exist or admitted to do

business under the laws of the State of Illinois, and used exclusively for the purposes of such societies and not for profit.

The next year the Board of Review of Effingham County refused to allow the exemption of such property owned by the Supreme Lodge of the Modern Fraternal Order. The Order appealed to the Auditor, who as the law requires, certified the facts of the case to the Supreme Court. That body decided that the amendment, clause "Eleventh" to section 2 of the revenue law, is unconstitutional. If these fraternal societies were "for charitable purposes"³ the constitution would permit the legislature to exempt their property from taxation; but the Court held that a benefit society was not a charitable institution within the meaning of the constitution, for its contracts of insurance are based upon valuable considerations and are legal and enforceable by law.⁴ In a case reviewed by the Supreme Court in 1902, the Court held that the fact that orders had been drawn upon a benefit fund prior to April 1st to pay beneficiaries of deceased members, does not exempt the benefit fund from taxation even to the extent of such orders, if no part of the orders have actually been paid.⁵ If these liabilities of a fraternal society against its benefit fund are not deductible from its money and credits at assessing time, how can the law of 1905 be justified which provides that the old line life company shall deduct its liabilities (which of course include claims unpaid) from its assets in listing its personal property?

In the last chapter, in discussing the efficiency of the State Board of Equalization, it is shown that under the present division of assessment between the local assessors and the State Board, domestic insurance companies are not well assessed for the general property tax.

³See wording of Constitution.

⁴Sup. Lodge Mod. Am. Fraternal Order vs. Bd. Rev., 223 Ill. 54, (1906).

⁵State Council of Catholic Knights of Illinois vs. Board of Review of Effingham County, 198 Ill., 441 (1902).

Insurance companies do not pay the same fees for incorporation as do business corporations in general; but each class of insurance company is required to pay fees provided for in the act under which it seeks to do business. The State receives a large revenue from these fees connected with the incorporation and regulation of insurance companies, both from the old line companies and from the assessment companies.

In 1869 the insurance laws were revised and a complicated scheme of license taxes was imposed. Life insurance companies were distinguished from fire, marine and inland navigation insurance companies. Since 1870 there has been passed a good deal of additional legislation imposing license fees, at varying rates, on different classes of insurance companies—such as local and mutual companies (1872, 1877 and 1887), beneficial and fraternal societies (1883 and 1893), tornado companies (1889), and accident, surety and casualty companies (1899 and 1905). By act of 1909 fire insurance companies are required to pay, in addition to taxes previously imposed, not exceeding one-fourth of one per cent of their gross premium receipts, as a fund for the maintenance of the office of state fire marshal.

For convenience and comparison the fees required of foreign companies of the same class as domestic companies doing business in this State are included in the following statement of existing license fees on insurance companies.

Fire, marine and inland navigation companies of Illinois pay an incorporation fee of \$30; foreign companies of the same kind paying a like sum for filing their declaration and charter; and for the examination of and appraisal of the securities that they put up with the insurance department, foreign companies pay the expense; for certificate of authority to agents, Illinois companies pay \$.50, foreign, \$2; for filing annual statements both domestic and foreign companies pay \$10; for filing copy of papers, per folio \$.20 and for affixing seal to the same \$1; for examination of company's financial condition whenever the Super-

intendent of Insurance deems it necessary, the company must pay the expenses.

Surety companies, casualty companies, and mutual burglary and casualty companies pay the same fees, except that the latter pay \$30 for the fee for filing the annual report instead of \$10; also a license tax of two per cent. on gross premium receipts.⁶

County fire (mutual) companies pay an incorporation fee of \$10 and annual fee of \$1 for filing a statement as required by law. Township fire and lighting (mutual), mutual wind, cyclone and tornado, and farmers' county mutual live stock companies each pay an incorporation fee of \$10 and \$1 for an annual renewal of certificate to continue business.

Life insurance companies pay an incorporation fee of \$30; foreign companies paying an admission fee of the same amount, must also pay a fee of three cents on each \$1000 of valuation of policies underwritten by them; for certificate both domestic and foreign companies pay \$2; for filing copy of papers, per folio \$.20, and \$1 for sealing same and certifying it; for certificate of securities deposited with the Auditor, a fee of \$.50; and \$.25 for attaching such certificate to the policy; also to pay the expenses incurred by the department of insurance in examining any company's financial condition. The same fees are paid by accident life companies, except that there is no provision for the registration of securities (the \$.50 and \$.25 fees above). Life and accident companies doing business on the assessment plan pay \$20 fees, instead of \$30, to start business; other fees are as above. Fraternal life and accident societies pay \$5 for certificate of authority to do insurance business of that kind; but foreign companies of like kind pay \$10. In 1905 a law was passed providing for mutual companies against loss to members in consequence

⁶The Insurance Superintendent under date of March 23, 1909, writes that no companies of the latter kind are doing business in Illinois; and that this two per cent. tax is obviously as invalid as the two per cent tax of 1899.

of accident to employees. These companies are left outside the regular jurisdiction of the Insurance Department; but foreign companies are required to pay an admission fee of \$100.

In the taxation of foreign insurance companies, Illinois taxes not only corporations but also joint-stock companies, partnerships and individual insurers, by the same laws. The right to do this was sustained by the United States Supreme Court in deciding a case brought to it by the Liverpool Insurance Company of England, appealing from the decision of the Massachusetts courts.⁷

The general property taxes paid by these companies are the same as already shown for domestic companies, with the exception of a special provision in the revenue law under which the net premium receipts of foreign insurance companies, other than life, are assessed and taxed as personal property. It is of interest to follow the historical development of this tax.

As early as 1844 a three per cent. license tax was levied on the gross premium receipts of foreign insurance companies.⁸ This was paid to the clerk of the County Commissioner's Court every six months and by him forwarded to the State Treasurer. It was, in the words of the statute, "to be considered as revenue of the State, and by the State Treasurer paid out as such." It was purely a state tax. The idea was probably borrowed from the Eastern States. New York in 1824 began to tax foreign fire companies ten per cent. of their gross annual premium collections in New York;⁹ in 1829 the application of the law was extended to marine companies; in 1837 the rate was reduced to two per cent. Maryland in 1839 imposed a two per cent tax. Our Illinois Legislature in 1843 evidently expected difficulty in enforcing their three per cent. tax on gross premiums, since they provided in the statute that the penalty for

⁷Liverpool Ins. Co. vs. Massachusetts, 10 Wallace, 566 (1870).

⁸Laws of Ill., 1843, p. 165.

⁹Seligman, *Essays on Taxation*, p. 150.

withholding any of the tax, was the infliction of a fine equal to double the amount withheld; and half was to go to the informer. The law does not seem to have gone into effect till 1844, and never to have been very productive of revenue. The following table shows the revenue under the law while it was in force:

1844	\$ 56.55
1845	58.44
1846	554.68
1847	208.07
1848	877.94
1849 & 1850.....	1269.68
1851	925.85
1852	184.40
1853	17.67

The constitutionality of this method of taxing foreign insurance companies was tested in the Supreme Court of Illinois in 1852.¹⁰ The case was a notable one in the history of litigation relative to the taxation of corporations. First, it was argued that the law was a violation of the "commerce clause" of the constitution of the United States, in that it was a regulation of commerce among the states. But the Court held, that issuing insurance policies was not commerce within the meaning of the "commerce clause", and therefore the law was constitutional. The decision on that point has been sustained by a series of United States Supreme Court decisions.¹¹ Second, it was argued that the law violated the "uniformity clause" in the Illinois constitution, which provided that "the mode of levying a tax shall be by valuation, so that every person shall pay a tax in proportion to the valuation of the property which he or she may have in his or her possession."¹² But it was held by the court that the tax on foreign insurance companies was a license tax, even though the Clerk issued no

¹⁰People vs. Thurber, 13 Ill., 554 (1852).

¹¹Paul vs. Virginia, 8 Wallace, 168 (1868); Hooper vs. California, 155 U. S., 648 (1894); N. Y. Life Ins. Co. vs. Cravens, 178 U. S. (1900); Nutting vs. Massachusetts, 183 U. S., 553 (1901).

¹²Constitution of 1818, Art. VIII, Sec. 80.

licenses, and it was therefore not a tax within the meaning of the section of the constitution cited.

The next year, 1853, the general assembly provided a new revenue law under the power provided in the constitution of 1848. Section 32 of that law prescribed the method of listing the real and personal property of railroads, turnpike, plank road, insurance, telegraph, and other joint stock companies, except corporations whose taxation was specifically provided for by law. But the section ended with the important proviso, that every agency of an insurance company, incorporated by the authority of any other state or government, should return to the assessor of the county in which the office or agency of the company was kept, in the month of May, annually, the amount of the gross receipts of the agency, which was to be entered on the tax list of the county, and be subject to the same rate of taxation for all purposes that other personal property was subject to at the place where located.¹³

The changes to be noted are three; first, that the gross premium receipts by the law of 1853 were to be taxed not under the State power to levy a license tax on business done by a foreign corporation as from 1843 to 1853, but under its general power to tax the property of persons and corporations; second, that the property of foreign insurance companies in the shape of premium receipts was to be assessed not on the basis of the amount on hand on May 1st, but of the amount collected for the entire year preceding May 1st; third, this assessed valuation was to be subject to the county and other local tax rates as well as to the State tax rate. This was the method, in general, of taxing foreign insurance companies until 1869. However, in addition, several cities in their special charters during this time were granted power to tax and regulate foreign insurance companies. For example, Chicago levied a two per cent. gross premium receipts tax. The tax from the fire companies was used exclusively to promote the ef-

¹³Revised statutes, 1857, p. 1037.

iciency of the fire department, and for the disabled firemen's fund; that from the marine companies, for the improvement of the river and harbor; that from the life companies, for the improvement of sanitary conditions.¹⁴ In 1865 the legislature provided that this special tax "for city or local purposes" on any life insurance company was to be no longer permitted to the cities, but their right to tax fire and marine companies was not withdrawn.¹⁵

In 1868 the general agent of a New York insurance company resisted the collection of the general property tax upon the gross premium receipts of his agency on the ground that the law of 1853 was unconstitutional. The Supreme Court of Illinois sustained the validity of the law¹⁶ and the insurance company appealed to the United State Supreme Court. There it was argued that the law violated the constitution of the United States, which provides that "the citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states."¹⁷ But the Court held that a corporation is not a citizen within the meaning of the word as used in that particular section of the Constitution, and hence the Constitution was not violated by the Illinois law in question. Second it was argued that the law violated the principle of comity between states in that it discriminated between domestic and foreign corporations. But the Court held that comity between states is not obligatory when declared to be contrary to public policy, and that the state may discriminate between domestic and foreign corporations, even though it may not do so between natural persons or property. Hence the law in question was not unconstitutional.¹⁸

The statutory basis of the present methods of taxing receipts of foreign insurance companies, was laid in 1869.

¹⁴Private laws of Illinois, 1863, p. 98.

¹⁵Laws of Illinois, 1865, p. 88.

¹⁶Ducat vs. City of Chicago, 48 Ill., 172 (1868).

¹⁷Const. of U. S., Art. IV, sec. 2.

¹⁸Ducat vs. City of Chicago, 10 Wallace 410 (1870), following Paul vs. Virginia, 8 Wallace 168 (1868).

It was founded on the constitution of 1848. Since those sections of the revenue article of the constitution of 1848 which delegated and defined the taxing power of the legislature, were practically transferred bodily to the constitution of 1870, it was not necessary at the time of the general revenue act of 1872 to reenact or revise the insurance laws of 1869, in regard to taxation.

The legislature had in that year passed two general acts for the incorporation of insurance companies in Illinois; one on March 11th, 1869, for fire, marine and inland navigation insurance companies; the other on March 26th, for life insurance companies. Both acts are still in force. Neither of the two statutes contains sections providing special corporation taxes on domestic companies, except fees; but both contain sections providing for the taxation of foreign companies on premium receipts and also for taxing them by the so-called "reciprocal" taxes. The act relative to fire, marine and inland navigation companies contains a section, section 30, which provides for the taxation of foreign companies on their net receipts, instead of on their gross receipts, as from 1853 to 1869.¹⁹ The language of the statute was indefinite as to the time. The Auditor in 1873 interpreted it to mean that net receipts like money or any other such form of personal property were to be returned only to the amount that was on hand on the first day of May.²⁰ But he was mistaken. In 1879 the law was amended so as to read plainly "net receipts of such agency for the preceding year." In 1874 the Supreme Court held that a company was taxable on premiums in course of collection (and on its reassurance reserve.)²¹ In 1905 the Supreme Court defined net receipts to mean "gross receipts less operating expenses, not including fire losses, and [does] not [mean] net profits."²² Section 30 of the gen-

¹⁹Laws of Illinois, 1869, p. 228.

²⁰Report to Gen. Assembly, 1873, vol. III, p. 652, copy of letter to Ducat.

²¹Republic Life Insurance Co. vs. Pollak, 75 Ill. 292 (1874).

²²National Fire Insurance Co. vs. Hanberg, 215 Ill. 378 (1905).

eral act for incorporating fire companies reads as follows:

Sec. 30. Every agent of any insurance company incorporated by the authority of any other state or government, shall return to the proper officer of the county, town or municipality in which the agency is established, in the Month of May, annually, the amount of the net receipts of such agency (for the preceding year)²³ which shall be entered on the tax lists of the county, town and municipality, and subject to the same rate of taxation for all purposes, state, county, town and municipal that other personal property is subject to at the place where located, said tax to be in lieu of all town and municipal license; and all laws and parts of laws inconsistent herewith are hereby repealed: Provided, that the provisions of this section shall not be construed to prohibit cities having an organized fire department from levying a tax or license fee, not exceeding two per cent., in accordance with the provisions of their respective charters, on (the)²³ said gross receipts (of such agency),²³ to be applied exclusively to the support of the fire department of such city.²³

This section was slightly amended in 1879 so as to express in exact words the meaning which had been intended by the legislature in 1869. The amendments are indicated above in the parentheses.

This same law of 1869 provided for a continuance of the charter rights of certain cities to levy a two per cent. license tax on the gross receipts of foreign fire companies, for the benefit of their fire departments.²⁴ This right had been granted to those cities only which had some sort of organized fire protection. In 1872 the general act for the incorporation of cities contained a provision of the same kind.²⁵ In 1895 an act was passed extending this power to all cities whether organized under the general incorporation act of 1872 or under some previously passed special act.²⁶ It was for the benefit no doubt of those cities which had received their charters before 1872 and had not been granted power to license and tax insurance companies. Since 1872 they had come to have organized fire departments and therefore to be eligible to have such taxing power. By surrendering their old charters they would

²³Law of 1869 did not contain words inclosed in parentheses.

²⁴Laws of Illinois, 1869, sec. 30, p. 228.

²⁵Laws of Illinois, 1872, p. 245.

²⁶Laws of Illinois, 1895, p. 104.

have been able to come under the general act of 1872 and have the coveted taxing power. But they did not care to surrender their old charters; so they gained their point by getting the law of 1895 passed.

It must be noted that foreign life insurance companies in contra-distinction to foreign fire companies, are not required to list their net receipts for assessment and taxation under the general property tax of the State. In 1896 a life company attempted to evade other taxes imposed by the Auditor by returning its net receipts as personal property and then claiming that it had complied with the revenue law. But the Supreme Court held that the law of 1869 in regard to taxing net receipts did not apply to life companies.²⁷

Reciprocal Taxes

Mention must now be made of a new feature which was added to the Illinois method of taxing foreign insurance companies by the law of 1869, a feature which is retained to-day, namely, the so-called "reciprocal taxes". Since the wording of the law is necessary to a clear understanding of its constitution, the section is given in full.

Sec. 29. Whenever the existing laws of any state of the United State, or any other kingdom or country, shall require of insurance companies incorporated by or organized under the laws of this state, and having agencies in such other states, kingdom or country, for the protection of the policy holders or otherwise, any payment for taxes, fines, penalties, certificates of authority, license fees or otherwise, greater than the amount required for such purposes from similar companies of other states by the then existing laws of this state, then and in every case, all companies of such states establishing or having heretofore established an agency or agencies in the state, shall be and are hereby required to make the same deposit, for a like purpose, with the Auditor of this state, and to pay to the Auditor, for taxes, fines, penalties, certificates of authority, license fees, and otherwise an amount equal to the amount of such charges and payments imposed by the laws of such states upon the companies of this state and the agents thereof: Provided that the payment required of such foreign companies shall, in no case, be less than required by this act.

²⁷Union Central Life Ins. Co. vs. Durfee, 164 Ill. 186 (1896).

To the every day reader, this section of the insurance law means that if another state or country taxes Illinois companies in any way higher than the companies of that state or country are taxed in Illinois then the Illinois Auditor of Public Accounts (the Insurance Superintendent since 1894) shall impose like taxes upon the companies from that state or country. But the Supreme Court has held an interpretation which is far more stringent. For example, in 1886 Louisiana passed a law providing that foreign companies whose gross premiums were between \$20,000 and \$30,000 should pay a license fee of \$400. No Illinois company was doing insurance business nor had been doing insurance business in the state of Louisiana. Nevertheless Auditor Swigert proceeded to levy a "reciprocal tax" upon a Louisiana company doing business in Illinois. He did so on the ground that the mere passage of a law by Louisiana purposing to tax foreign companies, was sufficient reason for retaliation by Illinois. Our Supreme Court sustained Auditor Swigert in his interpretation of the law.²⁸

The constitutionality of the "reciprocity clause" was passed upon in 1882. The case was as follows. The State of New York in 1880 enacted a law taxing foreign companies eight-tenths of one per cent. on insurance premium receipts (other than life and mutual benefit). January 1st, 1882, Auditor Swigert of Illinois by authority of the "reciprocity clause" of the law of 1869, which up to that time had never been invoked, imposed a like tax upon New York companies for the year 1881. They paid under protest and sued for recovery, the case at last, in 1882, reaching the Supreme Court. Counsel argued (1) that the "reciprocal provision" was unconstitutional in that it amounted to a delegation of Illinois legislative power (the power of levying taxes) to the New York legislature. But the Court held that it was not a delegation of power even

²⁸Germania Ins. Co. vs. Swigert, 128 Ill. 237 (1889); reaffirmed, Union Central Life Ins. Co. vs. Durfee, 164 Ill. 186 (1896).

though the operation of the "reciprocal" provision was contingent on the enactment of possible laws in other states. Counsel for insurance company argued (2) that the law had been a dead letter for twelve years. But the Court held that the fact that no occasion had occurred for its use was no argument against its vitality and validity. (3) It was contended that since New York companies were taxed this 8/10 of 1 per cent. while other foreign companies were not, that it was a violation of the Illinois constitution which provides that taxes on corporations shall be uniform as to class. But the Court held that by the express provisions of the "reciprocity clause", companies of such foreign states (as New York) are "constituted a distinct class for the purposes of assessment and taxation here."²⁹

That this law might have been enforced during its twelve year fallow period if the Auditor had set about it, may be inferred from a remark of the Attorney General in 1882 in his report to the General Assembly. "Under this decision", referring to the above, "and through the vigilance of the Auditor a considerable revenue will be obtained for the state that has heretofore been lost."³⁰ This may be indicated also in a statistical way. Ever since 1872 the Auditor, as required by law, has reported the fees collected from insurance companies. While he does not give separate account of those taxes collected from foreign companies under this "reciprocal tax", a bulge in the returns about the time of this decision in 1882 and thereafter indicates the presence of "reciprocal" taxes in the sums.

The revenue from insurance fees for the biennial period 1870-72 was \$21,972.65; and the revenue from this source increased but slowly to \$46,074.95 for 1880-82. With the enforcement of the "reciprocal taxes" from foreign companies in the next biennium there was a marked increase to \$168,131.39; and since then the revenue from insurance

²⁹Home Ins. Co. vs. Swigert, 104 Ill. 653 (1882).

³⁰Rep. to Assembly, 1882, vol. I. Att'y Gen., p. 13E.

companies has continued to increase rapidly. In the two years 1894-6, the revenue amounted to \$328,475.42; for 1900-02 it was more than \$600,000; and for the past few years has averaged about \$500,000 a year. Whatever may be thought of the incidence or the equity of the "reciprocal tax" on foreign insurance companies, it is a productive tax.

Up to 1893, the insurance fees and taxes were collected by the Auditor of State. In that year a separate Insurance Department was established under the direction of the Superintendent of Insurance, who collects the revenue and pays it over to the State Treasurer. A comparison of the collections reported by the Insurance department with the amounts paid over to the State Treasurer, shows that up to 1904, the latter amounts for each fiscal biennium corresponded with the collections for the two calendar years ending the preceding December. In the biennial period ending Sept. 30, 1906, the treasury receipts appear to include the collections for the three calendar years 1904, 1905 and 1906, as well as some refunds by a former Superintendent of Insurance. During 1906-08, the treasury receipts include some further refunds of the same kind.

The following tables show the revenue from corporation fees and from insurance companies from 1870, and the fees and taxes collected by the Insurance Department since 1893.

TABLE III
CORPORATION FEES AND INSURANCE FEES AND TAXES

BIENNIAL PERIOD	INSURANCE FEES AND TAXES (a)	CORPORATION FEES (b)
1870-72 ^c	\$ 21,972.65	.....
1872-74 ^c	31,467.87	.....
1874-76 ^d	35,620.54	.....
1876-78	35,374.10	.....
1878-80	38,137.20	.....
1880-82	46,074.95	\$ 7,629.89
1882-84	168,131.39	11,934.05
1884-86	127,854.55	12,125.95
1886-88	121,822.00	.....
1888-90	162,535.29	21,699.24
1890-92	171,472.26	33,587.68
1892-94	117,275.58	74,054.02
1894-96	328,475.42	178,464.62
1896-98	356,826.87	388,529.26
1898-1900	358,448.50	625,452.79
1900-02	622,759.87	555,471.28
1902-04	593,001.16	680,681.17
1904-06	1,224,662.82	747,503.48
1906-08	939,854.20	815,425.89
1908-10	926,819.30	.....

(a) Received by State Treasurer. Compiled from Reports of Auditor of Public Accounts.

(b) Collected by Secretary of State. Compiled from Reports of Secretary of State.

(c) Fiscal year ending Nov. 30.

(d) Fiscal year ending Sept. 30.

TABLE IV.
FEES AND TAXES COLLECTED BY THE INSURANCE DEPARTMENT—1893-1910.
[COMPILED FROM THE REPORTS OF THE INSURANCE SUPERINTENDENT.]

CAL- EN- DAR YEAR	ANNUAL STATE- MENTS, FIRE AND LIFE	AGENTS' LICENSES	CHARTERS FILED	TAXES	FEES TOWNSHIP & Co. MUTUAL FIRE	ASSESS- MENT ASSOCIA- TIONS	MISCEL- LANEOUS FEES	INTEREST ON DEPOSITS	EXAMIN- ATIONS OF COM- PANIES	TOTAL	FEES FOR ADVER- TISING	EXAMIN- ATIONS OF COM- PANIES
1893 ^a	\$3,335.00	\$31,451.00	\$485.00	\$84,581.22	\$198.15	\$350.00	\$217.70	\$766.79		\$131,284.86	\$17,680.00	
1893 ^b	220.00	5,178.50	60.00	8,243.89	34.00	250.00	55.75	74.76		14,452.64	635.00	
1894	3,455.00	36,629.50	545.00	92,825.11	232.15	600.00	273.45	841.55	335.74	135,737.50	18,315.00	
1895	3,575.00	37,162.00	555.00	85,600.59	219.15	855.00	460.05	1,805.94	5,601.32	135,834.05	18,950.00	
1896	4,280.00	41,630.00	730.00	124,464.44	250.00	1,185.00	861.00	2,069.61	2,024.68	177,503.73	20,095.00	\$1,944.52
1896	4,510.00	43,022.50	880.00	128,801.29	253.00	1,205.00	731.47	2,099.62		181,502.88	21,050.00	2,634.36
1897	4,942.00	48,252.00	765.00	118,740.42	257.00	1,250.00	1,117.57			175,323.99	22,490.00	9,586.91
1898	5,096.00	57,331.00	880.00	110,314.66	238.00	1,310.00	1,942.26		Special	177,111.92	23,770.00	35,736.81
1899	5,355.00	64,375.00	910.00	109,044.48	216.00	1,040.00	2,166.10		Agents	183,336.58	24,885.00	
1900	5,145.00	63,903.40	360.00	271,134.15	261.00	877.00	3,287.20		Surplus	277,792.12		Rec. from
1901	5,005.00	62,742.20	475.00	204,181.11	249.00	815.00	4,324.80		Lines	344,967.75		Co.'s for
1902	4,080.00	61,695.50	685.00	335,891.93	215.00	811.00	6,367.15			409,645.58	24,343.00	Valuation
1903	5,100.00	63,882.50	630.00	269,240.50	214.00	800.00	6,172.15		3,850.00	349,389.15		of Policies
1904	5,210.00	66,283.60	510.00	276,456.91	220.00	885.00	7,057.15		10,268.12	367,120.18		\$3,972.95
1905	5,526.00	73,460.00	795.00	235,422.72	252.00	1,032.00	18,210.00		4,425.01	359,134.03		4,453.52
1906	6,234.00	72,099.00	1,170.00	231,141.51	224.00	1,235.00	11,793.95		2,947.63	376,826.09		4,563.47
1907	6,280.00	76,894.50	1,185.00	479,031.67	228.00	1,030.00	14,844.55		6,500.09	585,986.81 ^d	29,390.00	
1908	5,615.00	79,291.50	780.00	350,228.35	231.00	1,125.00	15,312.07		6,842.08	459,424.50	29,895.00	
1909	5,850.00	83,463.00	890.00	353,788.92	230.00	1,125.00	6,619.80		6,001.95	466,508.71	30,180.00	
1910	6,235.00	88,506.00	1,140.00	372,568.35	230.00	1,470.00	8,417.82		5,798.45	495,125.62	31,770.00	

^a Jan. 1-July 20, 1893, by Auditor of Public Accounts.

^b July 20-Dec. 31, 1893, by Insurance Superintendent.

^c Total for 1893.

^d Less amount protested and held in trust (\$1,886.12) equals \$584,100.69.

CHAPTER VI.

OBSERVATIONS AND DEDUCTIONS

In 1889 Auditor Swigert defended the present system of taxing corporations and presented resolutions from the Board of Equalization which averred that, as an assessor of corporations, it was doing better work than local assessors of property were doing. On the other hand, in 1895 Governor Altgeld called a special session of the general assembly to do away with the system because of its poor work with corporations. In 1911, a Special Tax Commission authorized by the forty-sixth assembly, reported as its opinion of the State Board of Equalization that

the large membership of the board, its elective character, its inadequate powers and the short time which is allotted to it to perform its duties, prevent it and would prevent any similar board, from becoming a very efficient body in the administration of the tax laws.¹

As a basis for discussing these opposing views of the work of the State Board of Equalization, some statistical data in regard to the assessments made by this body are presented in the following table.

In 1873, the first year of capital stock assessments, the State Board of Equalization assessed the excess value of capital stock of corporations, other than railroads and the Western Union Telegraph Co. at \$20,730,057. This included 34 public service corporations, assessed at \$6,325,216, and 170 other corporations at \$15,573,235. The next year, 224 corporations were assessed on their capital stock but the total assessment was only \$11,719,216. In 1875, only 100 corporations were assessed, for \$4,802,112; and by 1877 only 33 corporations were assessed for \$1,605,783. The total assessed valuation of all property in the state had also declined, from \$1,355,401,307 in 1873 to \$931,199,308 in 1877; but the capital stock assessments had been reduced in

¹*Report of the Special Tax Commission, January 15, 1911.*

TABLE V.

CAPITAL STOCK ASSESSMENTS OF ILLINOIS CORPORATIONS,
OTHER THAN RAILROAD COMPANIES, BY THE ILLINOIS
STATE BOARD OF EQUALIZATION, 1873-1910.

[COMPILED FROM PROCEEDINGS OF THE STATE BOARD OF EQUALIZATION.]

YEAR	NO. OF CORPORATIONS ASSESSED <i>a</i>	VALUE OF CAPITAL STOCK REPORTED	FULL VALUE OF CAPITAL STOCK & FRANCHISE	EQUALIZED VALUE OF CAPITAL STOCK & FRANCHISE	EQUALIZED VALUE OF TANGIBLE PROPERTY	NET ASSESSMENT OF CAPITAL STOCK
1873	207	.....	.....	.....	.....	\$ 20,730,057
1874	224	\$ 40,777,920	\$ 38,958,489	\$ 25,118,105	\$ 13,398,889	\$ 11,719,216
1875	100	28,750,356	20,548,266	10,283,176	7,285,636	4,802,112
1876	87	.....	.....	.....	.....	3,373,751
1877	33	.....	.....	.....	.....	1,605,783
1878	46	.....	.....	.....	.....	1,837,556
1879	40	.....	.....	.....	.....	2,218,370
1880	29	.....	.....	.....	.....	2,179,460
1881	61	.....	.....	.....	.....	2,191,488
1882	91	.....	.....	.....	.....	2,397,986
1883	85	.....	.....	.....	.....	2,218,430
1884	80	.....	.....	.....	.....	2,087,902
1885	114	54,832,525	.....	9,078,083	5,286,460	3,791,623
1886	148	51,916,688	.....	8,942,358	5,185,781	3,756,577
1887	217	66,319,922	.....	10,241,903	6,670,997	4,289,706
1888	246	95,888,014	.....	13,158,666	8,069,435	5,089,231
1889	284	89,721,889	.....	13,431,629	8,594,313	4,857,545
1890	305	100,842,771	.....	14,582,584	9,007,615	6,956,909
1891	373	115,210,045	.....	15,939,336	11,493,980	6,273,693
1892	322	120,580,801	.....	15,933,182	11,287,807	6,549,202
1893	237	92,724,506	.....	14,503,129	9,139,150	5,363,979
1894	249	167,045,035	.....	15,735,390	10,740,613	4,994,747
1895	252	179,177,258	.....	14,975,288	10,192,779	4,782,509
1896	251	139,331,694	.....	14,794,660	10,764,276	4,030,384
1897	273	170,304,024	.....	15,908,424	11,857,591	4,050,833
1898	236	146,416,190	.....	14,694,000	12,260,595	2,433,425
1899	302	202,470,405	132,575,625	26,515,125	24,166,922	2,348,203
1900 ^b	266	236,067,920	129,489,040	25,897,808	21,089,178	4,808,630
1901	328	287,948,878	392,761,090	78,552,218	57,074,275	21,477,943
1902	1988	398,540,701	283,859,235	56,771,847	34,066,220	22,705,627
1903	1520	253,613,202	199,408,930	39,881,786	24,715,682	15,116,104
1904	1442	384,585,475	181,933,195	36,386,139	23,353,727	13,032,412
1905	1218	304,407,993	189,669,395	37,933,879	24,990,909	12,942,970
1906	1832	409,493,895	300,387,685	60,077,537	47,077,537	12,665,601
1907	1302	333,628,590	269,504,175	53,900,835	43,292,835	10,608,000
1908	1281	364,763,492	304,300,790	60,860,158	42,176,710	18,638,448
1909	1168	328,077,216	261,362,997	87,120,999	51,726,558	35,394,441
1910	2154	.....	.....	.....	.....	30,347,348
1911	930	.....	.....	.....	.....	30,568,450

^a See Table I for number of corporations not reporting and the number of corporations found to have no "excess" over tangible property.

^b Original assessment.

TABLE VI.
ASSESSMENTS BY ILLINOIS STATE BOARD OF EQUALIZATION,
1873, 1880, 1890, 1902, 1908, 1909.

1873.				
	COOK COUNTY		OTHER COUNTIES	TOTAL
Equalized Value of Railroad Track and Rolling Stock		\$3,611,282	\$55,706,126	\$59,317,408
Capital Stock—				
Railroads	(11)	2,510,982	(48) 62,100,089	(51) 64,611,071
W. U. Telegraph Co.....	(1)	73,253	(1) 1,095,141	(1) 1,168,394
Other Public Service Corporations.....	(9)	5,052,077	(27) 1,273,139	(36) 6,325,216
Other Corporations.....	(35)	6,583,527	(143) 7,821,314	(178) 14,404,841
Total Capital Stock.....	(56)	14,219,839	(219) 72,289,683	(266) 86,509,522
Total by State Board of Equalization		\$17,831,121	\$127,995,809	\$145,826,930
1880.				
Railroad Track and Rolling Stock.....		\$4,314,124	\$40,287,691	\$44,601,815
Capital Stock—				
Public Service Corporations	(6)	514,000	(14) 255,789	(20) 769,789
Other Corporations.....	(3)	1,245,297	(6) 164,374	(9) 1,409,671
Total Capital Stock.....	(9)	1,759,297	(20) 420,163	(29) 2,179,460
Total by State Board of Equalization		\$ 6,073,421	\$40,707,854	\$46,781,275
1890.				
Railroad Track and Rolling Stock		\$12,075,785	\$60,718,611	\$72,794,396
Capital Stock—				
Public Service Corp'ns..	(26)	3,726,335	(112) 1,094,915	(138) 4,821,250
Other Corporations.....	(66)	1,277,860	(110) 857,799	(176) 2,135,659
Total Capital Stock	(85)	5,004,195	(223) 1,952,714	(314) 6,956,909
Total by State Board of Equalization		\$17,082,880	\$62,668,425	\$79,751,305

TABLE VI.—(CONTINUED)

1902.			
	COOK COUNTY	OTHER COUNTIES	TOTAL
Railroad Track and Rolling Stock.....	\$20,628,933	\$64,990,109	\$85,619,042
Capital Stock			
Railroads	(6) 2,649,410	(2) 1,642	(8) 2,651,062
Other Public Service Corporations	(23) 15,794,471	(194) 1,103,621	(217) 16,898,092
Other Corporations.....	(1449) 5,395,595	(322) 411,940	(1771) 5,807,535
Total Capital Stock.....	23,839,476	1,517,213	25,356,689
Total by State Board of Equalization	\$44,468,409	\$66,507,322	\$110,975,731
1908.			
Railroad Track and Rolling Stock—			
Steam Roads.....	\$19,081,386	\$75,786,127	\$94,867,513
Electric Roads.....	5,824,501	2,733,130	8,557,631
Total.....	\$24,905,887	\$78,519,257	\$103,425,144
Capital Stock—			
Railroads	(6) 1,150,542	(4) 932,674	(8) 4,092,306
Public Service Corp'ns..	(11) 16,863,000	(30) 300,000	(41) 17,213,000
Other Corporations.....	(872) 1,261,268	(204) 209,150	(1076) 1,470,448
Total Capital Stock.....	(889) 19,273,840	(238) 1,501,914	(1125) 20,775,744
Total by State Board of Equalization	\$44,179,727	\$80,021,171	\$124,200,888
1909.			
Railroad Track and Rolling Stock—			
Steam Roads	\$32,309,833	\$129,121,743	\$161,431,576
Electric Roads	\$9,409,919	4,842,098	14,252,017
Total.....	\$41,719,752	\$133,963,831	\$175,683,693
Capital Stock—			
Railroads	(8) 1,629,766	(10) 1,315,515	(15) 2,075,281
Public Service Corp'ns..	(44) 30,003,341	(102) 733,000	(146) 31,637,241
Other Corporations.....	(920) 3,540,500	(102) 216,700	(1022) 3,767,200
Total Capital Stock	(972) 36,073,607	(214) 2,265,115	(1183) 38,338,722
Total by State Board of Equalization	\$77,793,359	\$136,259,946	\$214,063,413

TABLE VII

ASSESSED VALUATION OF SPECIFIED CORPORATIONS

YEAR	PULLMAN PALACE CAR CO.	PACIFIC HOTEL CO. (CHICAGO)	QUINCY HORSE RAIL- WAY AND CARRYING CO.	ST. LOUIS NATIONAL STOCK YARDS CO.	TRADER'S INSURANCE CO. (CHICAGO)	CHAMPAIGN- URBANA GAS, LIGHT AND COAL CO.
1873 t	\$.....	\$.....	\$.....	\$.....	\$.....	\$.....
a	a	a	a	a	a	a
B	2,100,000	350,000	35,000	350,000	131,839	34,539
1874 t	.....	570,000	.....	.....	.....	29,400
a	a	360,000	a	a	a	14,110
B	Not listed	210,000	30,000	Not listed	396,745	15,300
1879 t	.....	.....	.....	.....	.....	.....
a	a....	b	b	b	b	b
B	120,000	b	b	b	b	b
1884 t	.....	.....	.....	.....	.....	.....
a	a	a	a	a	a	a
B	144,000	Not listed ^c	5,000	100,000	15,000	5,000
1889 t	1,091,360	People's Gas	20,000	250,000	146,000	12,500
a	704,558	Light & Coke	16,965	140,287	112,500	4,327
B	386,802	Company	3,035	109,713	33,500	8,123
1894 t	1,743,595	250,000	40,000	266,000	110,000	16,000
a	1,149,771	227,984	23,445	102,596	100,100	13,950
B	593,824	22,015	16,555	163,404	9,900	2,050
1900 t	2,890,365	3,805,803 ^c	60,000	275,000	187,095	50,000
a	2,490,365	3,415,803	28,393	235,368	137,095	25,045
B	400,000	450,000	31,607	39,632	50,000	24,955
1901 t	4,512,648	8,612,399 ^c	75,000	263,181	170,022	50,933 ^d
a	3,012,648	2,859,393	47,244	213,181	110,022	20,933
B	1,500,000	5,782,997	27,756	50,000	60,000	30,000
1902 t	4,791,667	8,983,547	74,282	246,477	169,805	49,588
a	3,143,626	4,303,668	48,266	190,477	109,805	20,588
B	1,648,041	4,679,879	26,016	50,000	60,000	20,000
1908 t	23,348,900 ^f	9,870,753	76,800	50,000	g	54,185
a	21,348,900	4,898,955	56,800	g	g	52,185
B	2,000,000	4,980,798	20,000	50,000	g	2,000
1911 t	10,297,865	18,012,400	141,144	40,000	g	97,780
a	6,043,487	10,195,860	107,144	g	g	94,780
B	4,254,378	7,816,540	34,000	40,000	g	3,000

t means total tax valuation for the year.

a means local assessor's valuation on tangible property, equalized.

B means Board of Equalization's assessment of "excess".

a Data not to be found in the report of the Board's proceedings.

b No figures given; but Board reports company in the list of those which it found to have no "corporate excess" over and above the equalized value of tangible property locally assessed.

c The Pacific Hotel goes out of business or changes name; it was put into this list because it was one of the first to fight the assessment of the Board of Equalization.

d Urbana and Champaign Railway, Gas and Electric Co. from here on.

e This was one of the twenty companies re-assessed by the Board in 1901 for the year 1900, under the established rules as ordered by the Supreme Court of the State. As corrected its 1900 assessment is: total equalized value, \$12,632,960; assessment by local assessor, \$3,415,893; assessment by Board \$9,217,067. It should be noted, too, that the re-assessment of this and the other nineteen companies raised the total assessment for the state about \$32,000,000 above the figures given in the Board's report.

f In 1906 the Board for the first time put the Pullman Co. up to the range of valuation it now enjoys,—\$28,744,481 in 1906 and \$27,180,920 in 1907.

g This company was rendered insolvent by the great losses it sustained in the San Francisco conflagration. (Insurance report for 1907).

a much greater proportion—from 1.3 per cent to .17 per cent of the total assessed valuation of the state.

In 1880 only 29 corporations (the minimum number) were assessed on their capital stock. After this date the number of corporations assessed increased, and the assessed valuation of capital stock also increased slowly to \$6,956,909 in 1890. By the latter date, more than two-thirds of the capital stock assessment was on public service corporations. During the next decade, the capital stock assessments again declined to a minimum of \$2,348,203 on 302 corporations in 1899. This was about .25 per cent of the total assessed valuation of all property in the state.

Following the Teachers Federation case, the capital stock assessments showed a sudden increase, both in the number of corporations and the aggregate assessed value, to \$22,705,627 (about 2.2 per cent of the total assessed valuation) on 1988 corporations in 1902. More than three-fourths of the total assessment was on 217 public service corporations. But this increase was followed by a steady decrease for five years, to an assessment of \$10,608,000 on 1302 corporations in 1907. In 1908 capital stock assessments amounted to \$18,683,448; and in 1909 under the new rule providing that the taxable value should be one-third of the market value instead of one-fifth as formerly, the capital stock assessments of corporations other than railroads by the State Board of Equalization was \$35,394,441, —about 1.7 per cent of the total equalized valuation of \$2,158,648,450 for all property in the state.

The increase in capital stock assessments since 1900 has been mainly due to the assessments on a small number of corporations in Cook County. In 1909, the capital stock assessments on corporations other than railroads in Cook County was \$34,443,841, of which \$30,903,341 was on 44 local public service corporations. In all the other counties, the capital stock assessments were only \$950,600, less than three per cent of the total for the state; and of this \$733,900 was for local public service corporations.

Of the 1168 corporations assessed for capital stock in

1909, only 15 were assessed for as much as \$100,000, and only 95 for as much as \$10,000. The others were assessed for a few thousand or a few hundred dollars each.

The companies whose assessments are shown in Table VII are fairly representative of different interests and different business locations. The years chosen are those covered by seven Boards differing in personnel. Lean and fat business years are both represented. And years of placid administration by the Board, 1884 and 1889, are chosen to compare with such troublous years as 1900 and 1901 when outside pressure from the courts and others was brought to bear upon them.

At best, a statistical table can only tell half the truth. For example it may be noted that the assessment by the Board in 1873 was not equaled again till after 1901. Even as late as 1894 the "excess" was only \$4,994,777. The Bureau of Labor Statistics of Illinois, in its report on Illinois taxation, which has been noted all over the country, compared the assessment by the Board in 1894 with that made in 1873—the ratio is 5 to 22—and used this comparison as a count in condemning the Board's efficiency as an assessor of corporations. Neither by way of defending the Board nor by way of casting reflections on the Bureau's statistical methods, but simply to show that such a comparison is not wholly fair, it must be explained that since 1873 conditions have materially changed. 1. The figures for 1873 include the assessment of the Western Union Telegraph Company which was vacated by the Supreme Court; and also, as has been mentioned before, the assessment was abnormally high in 1873, its initial year, because of padding of the debt returns by the companies. They were under the mistaken idea that it would reduce the assessment on their capital stock, whereas the opposite result was actually occasioned. Moreover other property was valued at a higher rate in 1873 than at any time since. 2. The figures for 1879 and all the years since then would be considerably higher if certain classes of corporations which were assessed in 1873 had not been exempted from

the Board's jurisdiction by laws passed in 1879, 1893 and 1905. And this exemption includes, as we have seen in chapter IV, the exemption of thousands of corporations, some of them being eight figure concerns, and with hundreds of millions of capital stock. The simple fact then, that in 1894, as the Labor Bureau pointed out, the Board's assessment of "corporate excess" to corporations was not as great as it was in 1873, is not in itself *prima facie* evidence of the Board's inefficiency.

Again, a study of the Board's reports will lead to the deduction that often an increase in assessment by the Board has been followed by an increase in the assessment of tangible property by the local assessor; and since such a local assessment has to be deducted by the Board from the total valuation so as to determine a corporation's "excess", the consequence is that the next year it appears as if the Board had not assessed the corporation as high as it did the year before. For example, table VII shows that the Board's capital stock assessment to the Pullman Company has never been as high again as it was in 1873. When the Board levied a large assessment, the local assessors raised their assessments. Another illustration may be noted in the case of the Urbana-Champaign Railway, Gas and Electric Company in the years 1901, 1902, and 1908. A fairer basis to use in judging the Board's efficiency would be that of the yearly valuations which it puts upon a corporation's entire property—that is, the full value before being equalized. But such data are not available. Reference to Table I will show that in nineteen of the forty years of its administration, the Board has kept to itself all information of its proceedings on that point. Further, twenty-five times only out of the thirty-seven has it shown even what the total equalized value was, and in eight of the twenty-five cases has failed to disclose the basis of its equalization. This leaves seventeen years of figures; but from those must be deducted eight on account of the unspecified under-valuation since 1902. So the hope of securing statistics

on the actual value of the corporations as considered in the Capital Stock Committee must be given up.

If we compute the ratio of the Board's total valuation of corporations to the total valuation of property in the state, we find that in 1873 this was 22 to 1355; in 1899 it was 13 to 792; in 1894, 16 to 824; in 1900, 25 to 810; in 1901, 78 to 999; in 1908, 61 to 1263. Thus it appears from 1889 to 1901 the total valuation of the corporations which were assessed by the Board increased more rapidly than the total tax valuation of the state; but from 1901 to the present the Board's valuation of corporations has fallen behind. But here again the comparison is from insufficient data. There are no statistics as to the valuation put by the Board upon those corporations whose valuation was found to be equal to or less than the value assessed by the local assessor. Such statistics as would be of use can not be secured from the Board's reports. So the resolutions of the Board in 1888 to the effect that its assessment of corporations "as shown by its reports" was increasing while local assessments of all property in the state was decreasing² may be taken with a grain of salt.

This statement leads to the consideration of the other side of the case. Was Governor Altgeld correct in his assertion that the present system is "a giant of injustice", that most of the smaller corporations are properly taxed while many of the larger ones escape?³ It can not be proved from Table VI, but the conjecture can be supported by certain facts. It will be recalled from the previous discussion that 1900 and 1901 were years when great pressure was brought to bear upon the Board to coerce it to do its whole duty. A comparison of assessments of the great franchise corporations in columns two and three of Table VII with the others, tends to support the declaration of the ex-Governor. Since the mandamus of the courts in 1901, the Board has increased the Pullman Company more than

²*Proceedings State Board of Equalization, 1888, p. 81.*

³Reports to Gen. Assembly, 1895, vol. I, p. 24.

1100 per cent. on its 1894 valuation; it has raised the People's Gas Light & Coke Company more than 3900 per cent.; while the small Quincy Horse Railway & Carrying Company has been increased only 96 per cent.; the St. Louis National Stock Yards has been increased 56 per cent.; the Urbana-Champaign Railway, Gas Light & Electric Company has been increased 250 per cent. The last named may be largely accounted for by the addition since 1894 of the railway and electric business. The writer does not claim that these items prove the Board to be inefficient. But they are straws blowing in that direction.

Evidence may also be adduced by checking the Board's reports with those of the Insurance Superintendent and of the Auditor of Public Accounts. For example, in 1901, the very year when the most pressure was brought to bear on the Board, it failed to assess the domestic life insurance companies and fell far short of the proper valuation of the domestic fire companies which it did assess. From the insurance report for the year 1901 the following facts are deduced. The number of incorporated fire companies assessable by the Board was six. Their admitted ledger assets over and above liabilities, amounted to the sum of \$7,889,024. At a 14 per cent. valuation their property amounted to \$1,104,463. But to avoid the possible error of including shares of national banks located in other states, or United States bonds or shares of stock of companies taxed on their capital stock by the Board, a 14 per cent deduction on the sum of such property is due, to the amount of \$186,163.

This deduction leaves \$918,300 that was taxable in 1901. Now turning to the Board's report for 1901 it is seen that the actual assessment was much less than that amount. The local assessment on tangible property was \$212,554, the Board's "corporate excess" was in all only \$150,040, a total of \$362,594. This was more than half a million less than it should have assessed those companies. It looks as though the Board let the fire companies off lightly. Further, from the same insurance report the fact

may be similarly deduced that the three domestic life companies in that year had taxable property, at a 14 per cent. valuation, to the amount of \$198,648. But the Board's report contains no reference whatever to those companies. The 1902 insurance report shows that only one paid a tax. That was a Chicago company that paid about \$3,000. At a five per cent. rate of taxation this would give that company a valuation of only \$60,000. It might reasonably be expected that an efficient Board would assess these companies something at least.

Turning now to the Auditor's report for 1906, we find that there were three Illinois trust companies which were not organized under the banking laws but under the general incorporation law, and hence taxable by the Board. It did value one of them, the Illinois State Trust Company, of Springfield; but it did not find that the company was worth any more than the local assessor had valued it, namely, \$56,000. Now by a process similar to that used in the case of the insurance companies just discussed,—that is by throwing out all the stocks and bonds lest some should be stock of national banks located in other states or U. S. bonds or stocks of companies taxed by the Board on capital stock,—it can be shown that the Illinois State Trust Company under inspection of the Auditor, was worth, at a 14 per cent. valuation, \$194,865. Thus it appears that the Board might have assessed this company nearly \$150,000 "corporate excess." But it did worse than that in the case of the other two trust companies. The Chicago Title & Trust Company had a capital stock of \$5,000,000 and undivided profits of \$1,113,515.89. The Equitable Trust Company had a capital stock of \$500,000; a surplus in the sum of \$500,000; and undivided profits of \$30,796. The first had resources of \$6,116,245; the second, of \$5,836,037. But no trace of any action by the Board in regard to either of these companies is discernible in their report.

If insurance companies and trust companies, which can be located and can be valued by aid of the official reports

of the Superintendent of Insurance and of the Auditor, are not all assessed; and if those that are assessed, are improperly assessed by the Board even after a severe castigation by the Supreme Court; what may be concluded as to its efficiency in general as an assessor of corporations? After giving the Board the benefit of every doubt in the statistical discussion, these facts together with those brought out in the discussion of the mandamus action against the Board in 1901, force a conclusion in the negative. The board has not proved to be an efficient body for the assessment of corporations.

Before venturing to suggest a remedy, it may be well to summarize the legal decisions and the deductions from the investigation of the workings of the system.

1. We have seen that the capital stock, within whose valuation are considered bonds and franchise, is in the aggregate held to be personal property taxable to the corporation.

2. We have seen that national banks cannot be taxed on their capital stock.

3. We have seen that certain classes of corporations are taxable on both their tangible property valuation and a "corporate excess" valuation which is determined by deducting the value of locally assessed tangible valuation from the assessed and equalized capital stock, debt and franchise valuation; also that shares of stock of such corporations are not taxed to the holders thereof.

4. We have seen that for years certain classes of corporations have been exempt from taxation on their capital stock on the supposition that it is constitutionally allowable thus to favor certain business enterprises.

5. The decisions of the Supreme Court, however, hold that no capital stock can be by law exempt from taxation. And if the case came up no doubt the Supreme Court would hold that no shares of capital stock can be exempt from taxation even though the capital stock be assessed by the Board of Equalization. For the Court has held that the aggregate of capital stock is distinctly property of the

corporation; while shares of stock are distinctly property of individuals. The constitution does not provide that any such property can be exempted by the legislature; and the courts have overruled every other consideration in holding that no property may be exempted by the legislature which is not specifically permitted by the exemption clause of the constitution.

The situation in the state to-day, then, stands as follows. The capital stock and franchise of every business corporation (except national banks) is, under the present revenue system, as construed by the courts, assessable either by the Board of Equalization or by the local assessor. Of those that are left to the local assessor, we have seen that while banking corporations with an admirably well worked out system of listing their property, are in recent years assessed more than other classes of corporations, the heretofore exempted classes of corporations, the "purely manufacturing, mercantile, coal mining and selling, printing, publishing and stockbreeding" companies, are especially difficult for the local assessor to assess on capital stock, as no provision in the revenue law gives him power to command information from the companies. Of those corporations which still remain subject to the assessing power of the Board, it has just been shown that they are more or less inefficiently assessed. The main causes of this failure of the system that have been brought out in this study are two, namely, (1) the failure of the Board to secure data for the valuation of corporations, and (2) the failure of the Board to do its whole duty. Finally, the general conclusion of the whole study of the taxation of corporations in Illinois, other than railroads, since 1872, is that they are not properly taxed under the present system.

Now the writer ventures to suggest a remedy. It is not advocated that revolutionary measures must be taken. But as long as the value of property is held to be the test of ability for sharing tax burdens, and as long as state and local revenues are levied on the same assessment basis, this

“corporate excess” method must be improved. Properly worked it would bring all competing corporations before the same assessing body, where each could be taxed as a going concern by the same rules. If the Board we have were at work the year round, with power to assess the tangible property of corporations, and with power to compel the production of corporation books and papers, no doubt the present plan might work more effectively. But the number of members makes the Board unwieldly; while the method of election by districts gives no assurance of either special qualifications or of any real responsibility, which are necessary to secure efficiency. A small body of experts appointed by the Governor would occupy such a position, especially if their term of office were that of “good behavior”. The work and the reports of such an assessing body must be an open book to the public. To provide for this, the general forms and procedure in the collection of data, the use of the same and the statistical reports of the same as well as all the reports of the special proceedings of the state assessing body, must be mapped out for that body. The general assembly is not the agency to work out such detailed regulation. It is a special work for a commission made up of masters in the theory of taxation and of experts in the business methods of corporations.

Such a small board of experts as is here proposed, has been recommended by the Special Tax Commission, in its report submitted to the general assembly by Governor Deneen in 1911. Governor Dunne in his inaugural address has also urged the abolition of the State Board of Equalization, and the creation of a permanent State Tax Commission, to exercise its functions and to have general supervision over the administration of the revenue laws.

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INDEX

- Altgeld, Governor, 42, 92, 100.
- American Biscuit and Manufacturing Company, 70.
- Assessment of corporations by local assessors, 10-11; by State Board of Equalization, 10-12.
- Assessment of banking corporations, 55-62; bank stock tax, law of 1857, 56; change made by law of 1867, 57; debate on in constitutional convention, 58; tangible property, 59-60; Bureau of Labor Statistics, 60-61; Special Tax Commission of 1910, 61.
- Assessment of business corporations exempt from jurisdiction of State Board of Equalization, 54-72; foreign corporations, 54; banking corporations, 55; companies organized for certain purposes, 62-70; historical development, 64; wording of charter, test, 68; a list of such companies, 70; inequality apparent, 70; homestead loan associations, 70-72.
- Assessment of inter-state corporations, 22, 23, 54.
- Assessments by State Board of Equalization, tabulated, 93-96.
- Attorney-General, 25, 26, 32, 34, 66; opinion on coercive power of State Board, 25, 26; hostility to undervaluation, 32, 34; as to jurisdiction of Board, 66.
- Auditor of Public Accounts, 17, 26, 48, 58, 68; member, ex-officio, of State Board of Equalization, 17; reports neglect of corporation to comply with law, 26; certifies "corporate excess" to county clerks, 47; reports resistance of corporations to tax, 48; reports escape of special charter banks, 58-59; comments on inequality, 68.
- Banks, 55-62, 73-75.
See Assessment of banking corporations.
- Bonds, or funded debt, 24.
- "Blank No. 5," 24.
- Building and Loan Associations, 70-72.
- Bureau County Board of Supervisors, 32.
- Bureau of Labor Statistics on bank taxes, 60-61; on efficiency of State Board of Equalization, 98.
- Capital stock tax defined, 8, 52.
- Capital Stock Committee of State Board of Equalization, 27, 28-29, 43-46, 38-39, 41, 42, 44, 46, 66.
See State Board of Equalization.
- Colburn, on undervaluations, 35.
- Collection of corporation taxes, 47-53; local collectors, 47; county collector for part of telegraph company tax, 47; collection at source, 56, 59.
See also Fees.
- Collection resisted by attacking validity of law, 48; use of injunction, 48; ruling as to use of injunction, 49; decisions on validity of law and legality of assessments by Board of Equalization, 50-53.
See also Court Decisions.

- Conclusions, 46, 60, 69, 92-105.
- Constitutionality, 50-53, 83, 84.
- Constitutional provisions, 9, 64.
- Cooley, T. M., on franchise tax, 51.
- Corporate excess defined, 10, 11, 15, 19.
- Corporations classified, showing taxes, fees, etc., paid by each class, 13-15.
- Corporation tax defined: Professor Seligman's definition, 7, 8; court decisions, 7, 8, 26; Judge Grosscup's "capitalization of net earnings," 40.
- Court decisions as to uniformity, 32-34; as to equality, 37; compelling honest assessment, the Teachers' Federation suit, 36-41; validity of revenue law, 48; legality of action of State Board of Equalization, 48-53; injunctions, 49; validity of gross and net receipts taxes, 82, 84; validity of "reciprocal tax," 87.
- County clerk, 20, 24.
- Cullerton, on merger companies, 23.
- Difficulties in assessing corporations, 5, 6, 24, 25, 26; Board lacks power to compel corporations to furnish data, 25; statistical table showing character and lack of data, 28-29.
- Edsall, James K., Attorney-General, 66, 68.
- Exemptions from all taxation, 14; from assessment on capital stock by State Board, 52-72; by other states, 63; debate in constitutional convention, 64; Manufacturers' Association, 66; decision of 1908, 67; injustice of, 68, 70.
- Dunne, Governor, recommendation of, 105.
- Fees, licenses and retaliatory taxes, 73-91; prior to 1872 retained by certain state officers, 73; merger fees, 1872 to 1893, 73, 90; general incorporation fees, varying for class, and charges sliding, 73-75; statistical table of, 90-91; examination fees for state banks and savings banks, 75; on corporations not chartered for pecuniary profit, 74; insurance incorporation fees, domestic, 78-79; filing of declaration and charter, filing and declaration of securities by foreign companies, 78; filing of reports, copies of policies, certificates, etc., 78-79; retaliatory fees, licenses, taxes, 86; enforcement begun, 87; validity sustained, 87; productivity of, 88, 89; revenue from, Table IV, 91.
- For net and gross receipts tax, see Insurance Companies, General Property Tax of.
- Fire Insurance Companies, see Fees, Licenses, and Insurance Companies.
- Foreign corporations, 22, 54, 55, 80, 87.
- Franchise tax defined, 8, 51; city tax on franchises, 16; general property tax on, 19.
- Fraudulent assessment, 39, 53.
- General property tax, 5, 6, 7, 8, 9, 11, 15, 21, 31, 51, 57, 60, 63, 64, 67, 68, 71, 72, 76, 77, 82, 84, 100, 103, 104.
- Gottfried Brewing Company, 70.

Grosscup, Judge, injunction, 40-41; overrules state supreme court, 41.
Gross receipts tax, 82-83.

See Insurance Companies.

Hand, Justice, opinion of Illinois Supreme Court in mandamus suit, 38.

Hearn on "Sworn Statements," 27.

Illinois Steel Company, 70.

Incorporated charities, 14.

Inequality, 34, 35, 41, 51, 68, 70.

Ingersoll, R. G., argues that revenue law violates 14th amendment, 51.

Injunctions, 49, 57.

Insurance Companies: fees, licenses, etc., 78-79, 86-89, 91; general property tax of domestic companies, 75; fraternal benefit, 76; life companies favored, 76-77; undervaluation, 101, net receipts tax of all foreign companies except life, 80-84; originated as license tax, 80; "commerce clause" invoked, 81; changed to gross receipts property tax in 1853, 82, 83; took present form in 1869, 85; definition of by court, 84; "reciprocal taxes," section of law authorizing, 86; real meaning, retaliation, 87; Auditor Swigart begins enforcement, 87; revenue produced, 88, 89; validity sustained, 87; revenues from insurance companies, 91.

Intangible personal property, 5, 11, 25.

Jurisdiction of State Board, 22, 23.

Lewis, J. Hamilton, Chicago Counsel, 42.

Laundry Companies, 70.

License fees; See Fees, licenses, etc.

Life Insurance Companies, 76, 77, 78; special fee of foreign companies on each \$1000 of policies, 79.

Limitations on taxing corporations, 10.

Lippincott, C. E., 17, 18, 22.

Listing of property, 11.

Local assessments, 11.

See Assessor.

Local license fees, 82-83.

Manufacturers' Association asks exemption from capital stock tax, 66.

Mercantile companies, 13, 62, 66-67.

Miller, Justice, opinion United States Supreme Court on tax injunction cases involving constitutionality of revenue law, 49.

Mining companies, 13, 62, 66.

National banks, 55, 57.

Number of companies taxed on capital stock, 15, 28-29.

Organization fees: see Fees.

Palmer, Governor, 18.

Personal property tax, 21.

See Assessment and General Property tax.

- Porter vs. R. R. I. & St. L. R. R. Co., 48.
Printing and Publishing Companies, 13, 62.
Public Service corporations, 16.
Pullman Company, 41, 42, 96, 99.
Real Property, 11, 47.
Revenue Law quoted verbatim, 26, 29, 65, 71, 85, 86.
Revenues from corporation taxes, 75, 97, 88, 90, 91.
Savings banks: see Banks.
Seager, H. R. opinion on method of determining "corporate excess," 31.
Secretary of State, 69.
Seligman, E. R. A., defining corporation taxes, 7, 55.
Special Tax Commission of 1910 on bank taxation, 61-62; recommends permanent State Tax Commission, 105.
State Banks, 73, 75.
State Board of Equalization: origin of, 17; its influence on framing of the revenue law, 18-19; its duties and limitations, 10-12; its jurisdiction, 17, 19, 22, 23, 54, 55, 62, 70; its power to get data, 25, 26, 27; its difficulties in securing data shown by Table I, 28-29; its rule used in determining "corporate excess," 29-31, 52; its unwritten rule of undervaluation, 31-36; conflicting legal decisions, 32, 33; new rule adopted in 1900, 37; compelled to retain old rule by mandamus action brought by Chicago Teachers' Federation, 38-41; Judge Grosscup's injunction, 40-41; Capital Stock Committee's proposed record book, 27; why railroad capital stock taken from jurisdiction of, 27; tabulated reports, 28-29, 43-46; fraud in assessment, 38-39; reports of committee not open to criticism and amendment of the Board as whole, 41, 42, 44; deficiencies in its report, 44; character of closed committee, 46.
Statistical Tables, 28, 29, 45, 70, 81, 90, 91, 93, 96.
Stocks and bonds, 12.
Stockbreeding Associations, 13, 62.
Strike fund of union taxable, 15.
Swigart, Auditor, 87, 92.
Sworn statements of capital stock debt, etc., 20, 60.
Tangible property, 11, 47, 54, 60.
Tax Injunction Cases in United States Supreme Court, 49.
Teachers' Federation mandamus suit, 36-41.
Telegraph companies, 14, 15, 20, 22, 48, 54.
Trust companies, 102.
Undervaluation, 32, 35, 36, 39, 53.
Uniformity, 32, 33, 34, 37, 41, 51.
United States Sugar Refining Company, 70.
Valuation: see Assessment.
Warner on "fair cash values," 27.
Western Electric Company, 70.

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The West in the Diplomacy of the American Revolution

BY

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PREFACE

In this essay I have tried to show to what extent and in what respects the Mississippi Valley was a subject of diplomatic negotiations in the American Revolution. Altho many different views have been advanced on this question, I do not believe that any American scholar has, as yet, made any considerable use of the material available in this country and Europe for the purpose of getting at the exact truth. Doniol did not appreciate the importance of the West in the diplomacy of the American Revolution, and, altho he quotes many important documents bearing on the subject, he omits many of the most valuable, and in no sense does he attempt to explain the whole question.

This study is written almost entirely from the sources and some of its conclusions differ from those commonly accepted, while in other cases, I believe additional light has been thrown upon facts already established. Altho Spain's ambition to get control of the lands bordering on the Gulf of Mexico and the Mississippi is well known, I do not think that the definite purpose back of her tortuous and apparently vacillating policy has ever been properly explained. Vergennes's professions of friendship for the United States and his opposition to their claims to the West have been regarded too long as proof of his duplicity. Vergennes himself did not regard his policy towards the West as unfriendly to his ally, or as inconsistent with the terms of the treaty of alliance, and, at no time, did he attempt to conceal his views. The evidence shows beyond doubt that he was conceding to the United States all he thought they had a right to claim. The main outlines of British policy are already well understood, but the efforts of Shelburne to detach the Americans from the French alliance have not received the attention they deserve. The greatness of Franklin as a diplomat appears in a new light when it

is understood that, but for the obstinacy of Jay and Adams, he would have obtained for his country the richest parts of Canada.

To establish the facts herein set forth, the archives of Washington, London, and Paris have been searched in addition to a careful reading of all available printed material. I regret that I could not go through the archives of Spain; but I found, in the French foreign office, copies of many Spanish documents obtained by the French ambassadors and agents during the years from 1774 to 1783.

For assistance in preparing this study I am indebted to Professors Eyarts B. Greene, Guy Stanton Ford, and Laurence M. Larson of the University of Illinois. I desire also to express my thanks to Mr. Waldo G. Leland of Washington, D. C., for much valuable help and advice while I was working in the archives of Washington and Paris.

To Professor Clarence W. Alvord of the University of Illinois I must acknowledge my greatest obligations. While I was working on this investigation he carefully and painstakingly went over all the material with me, and gave me his time to discuss and analyze every point; and during my study with him he offered many valuable suggestions and helpful criticisms which have added much to the thoroughness of my work.

Notwithstanding my efforts and the assistance of my friends, I realize that there are many weak spots in the study as here presented. On some points the material is not absolutely conclusive, and there are doubtless many valuable documents which I have not unearthed. I hope, however, that in spite of many defects, this essay has added something worth while to our knowledge of the West in the diplomatic negotiations of the American Revolution.

P. C. P.

CONTENTS

Abbreviations	6
Chapter I—The Origins	7—26
Chapter II—Vergennes and Spanish Diplomacy.....	27—57
Chapter III—The Question of the West.....	58—68
Chapter IV—The French Alliance.....	69—90
Chapter V—Florida Blanca and the Convention with France.....	91—107
Chapter VI—Development of a Congressional Policy toward the West	108—130
Chapter VII—Vergennes and the Allies of France.....	131—149
Chapter VIII—Luzerne and the Pretensions of Spain.....	150—172
Chapter IX—Triumph of the Anti-Gallican Party.....	173—188
Chapter X—The close of the War.....	189—202
Chapter XI—Vergennes and the Negotiations for Peace.....	203—215
Chapter XII—Peace	216—227
Bibliography	228—238
Index	239—247

LIST OF ABBREVIATIONS

- Arc. Aff. Etr.—Archives des Affaires Etrangères.
Am. Hist. Rev.—American Historical Review.
Angre.—Angleterre.
Arc. Col.—Archives des Colonies.
Bt. Trs.—British Transcripts.
C. O.—Colonial Office.
Dip. Cor.—Diplomatic Correspondence.
Esp.—Espagne.
E. U.—Etats Unis.
F. O.—Foreign Office.
L. C.—Library of Congress.
Nou. Acq. franc.—Nouvelles Acquisitions françaises.
P. R. O.—Public Record Office.
S. M. C. or Sa. Maj. Chr.—Sa Majesté Chrétienne.
S. M. Cath—Sa Majesté Catholique.
U. of W.—University of Wisconsin.
()—manuscript illegible.
[]—word supplied.

CHAPTER I

THE ORIGINS

For more than a century before the American Revolution the Mississippi Valley was an object of interest to the colonizing nations of western Europe, and to their subjects who were scattered along the shores of North America. Spanish adventurers had wandered northward from the Gulf of Mexico; and, from the region of the Great Lakes, French missionaries and traders penetrated to the heart of the continent; while, from the headwaters of the James and Potomac rivers, enterprising Virginians descended the western slopes of the Alleghanies to claim a share of this rich country.¹ The colonizing efforts of the French and English, and their bitter rivalry during the first half of the eighteenth century, foreshadowed the struggle for the Mississippi; but the ownership of the country between that river and the Alleghanies was not decided until the last French and Indian war witnessed the triumph of the English.

With the Treaty of 1763 eighteenth century diplomacy begins a new development. In Europe and America alike, the close of the Seven Years' War marked "the end of an era, the beginning of an era." France and Spain were both reduced to the rank of second rate powers,² while Great Britain, with undisputed supremacy on the ocean, stood forth the arbiter of European politics. In Prussia, Frederick the Great smarted under the sense that he had been

¹Alvord and Bidgood, *The First Explorations of the Trans-Alleghany Region by the Virginians, 1650-1674*, is a convenient and valuable account of the beginnings of English colonization in the Mississippi Valley.

²Vergennes recognized this as a fact. "The deplorable peace of 1763," he informed Louis XVI., "the partition of Poland, and in fact other causes equally disastrous, have struck the greatest blows to the respect for your crown". Doniol, *Histoire*, I, 13.

sacrificed to Hanoverian intrigue, and looked with pleasure on any danger which threatened his former ally.³ Of the Bourbon powers, Spain was willing to accept her fate if she were given peace and an opportunity to recuperate her wasted fortunes,⁴ but the tarnished glory of French arms called loudly for vengeance. "The humiliation of Britain! The prestige of France!"⁵ These were the phrases most often on the lips of French statesmen in the decade following the Peace of Paris. To their minds the first was the means to the second. To realize their ambition, the wisest of them knew that, in addition to the old coalition of the *Pacte de Famille*, they must raise up a new foe to Great Britain. The shrewd and crafty Choiseul saw, in the liberty loving English colonies in America, the latent power needed for this purpose. Ever alert for advantages abroad, he carefully nourished national resources at home⁶ until France should be ready to strike. To the capable and energetic Vergennes was left the task of building up the new coalition, of guiding its forces against the common enemy, and finally of apportioning the spoils between his greedy

³"Ici l'administration envisage comme très probable une guerre de la France et de l'Espagne avec l'Angleterre. Je crains qu'ils ne considèrent l'indépendance des colonies comme devant être une conséquence de cette guerre, et ils se flattent d'avoir à y gagner beaucoup." Elliott, British minister to Berlin, to Lord Suffolk (without date). Translation in Circourt, III, 293.

⁴"L'ambition n'animait pas Charles III., il aimait la paix." (Doniol, *Histoire*, I, 293.) Ossun, the French minister to Spain, wrote to Vergennes, December 11, 1775, that Charles declared he had no desire to acquire new territory. *Esp.* 578, no. 70. Later (December 28) Charles urged that Spain had much to lose and nothing to gain by war. (*Ibid.*, no. 74.)

⁵Before the conclusion of peace in 1763 France was planning for a new war with England. She wished to repair her losses, and be ready to strike at the first opportunity. Memorial of the Duc de Broglie, 1762. (*Archives de la Marine*, B4, 135, fol. 4-6.) Choiseul had the same ideas in mind. See account of his schemes in Perkins, *France in the American Revolution*, 22-32. "Rappelez-vous Monsieur, que j'ai toujours établi en principe qu'en nous occupant à humilier l'Angleterre. . . elle est nécessaire dans la balance de l'Europe." Vergennes to Montmorin, September 21, 1779. (Circourt, III, 317.)

⁶Perkins, *France in the American Revolution*, 24.

allies. The British conquests of the Seven Years' War became once more a bone of contention, this time between the jarring nations in alliance with France, and around them twined the intricate negotiations of the American Revolution. The Floridas, Canada, and the strip of land lying between the Alleghanies and the Mississippi called by the French "Eastern Louisiana," lacked the population to give them a title rôle in the drama of a world struggle, but their position made them of vital importance in the settlement of peace. The United States desired them as a guarantee against powerful neighbors, while Spain feared the danger to her colonial possessions of a strong, independent nation in the New World.⁷ Upon the reconciliation of these divergent interests depended the success of the new French diplomacy, and upon this problem Vergennes was to spend many thoughtful years, only to find its solution wrought out by other men, working on principles strange to his ideas, and with forces unknown to his reasoning.

With the expulsion of France from the New World all fears of the enemy which, for so many generations, had harassed the English colonies, passed away. The treaty of 1763 portended the establishment of the United States, for it left the English colonies free to set their autonomous views against the British imperial policy. Altho the English and American viewpoints were essentially different there were but few to see the necessity of reconciling their antagonistic principles.

⁷See plan of treaty drawn up by Congress in September, 1776. *Journals of Continental Congress* (Ford ed.), V, 770. In the early discussions of peace the chief American argument for extended boundaries was the necessity of keeping foreign powers at a distance. Luzerne to Vergennes, June 8, 1781. (*E. U.*, XVII., no. 145, new 17.) So fearful was Spain of American power that she insisted that Great Britain be guaranteed possession of Canada and Nova Scotia, and suggested that she be allowed to keep certain places in the states, as New York or Boston. Montmorin, French minister to Madrid, to Vergennes, October 1, 1778 (*Esp.*, 591, no. 61) and again on October 15 (*ibid.*, no. 33, new 61).

In regard to the unoccupied lands of the West the British ministry had two policies before it. One was to throw them open to settlement and allow the inhabitants of the Atlantic seaboard to establish homes there; the other was to keep them in wilderness, inhabited only by Indians and traders. The first of these plans naturally received the support of the Americans, and their chief advocate was Franklin.⁸ The ministry was undecided what course to take but at first, under the lead of Lord Shelburne,⁹ appeared willing to favor the American desires. For several years there was much discussion of the matter, but no definite policy was adopted.¹⁰

The tendencies of British politics, however, were becoming more and more imperialistic, and in the development of this new imperialism, three acts of vital importance for the West were promulgated. These were the

⁸As early as 1754 Franklin suggested a "plan for settling the western colonies in North America with reasons for the plan". (*Works* (Smyth ed.), III, 358.) At an early date he also urged the advantages of a settlement in the Illinois country. (*Ibid.*, IV, 462; V, 46.) January 3, 1760, he wrote, "I am therefore by no means for restoring Canada. If we keep it all the country from the St. Lawrence to the Mississippi will, in another century be filled with British people." (*Ibid.*, V, 4.)

⁹Shelburne became president of the board of trade in 1763. Altho deficient in education and superficial in thought, his brilliant imagination conceived a grand imperial policy for America. At the same time his friendship for the Americans led him to favor colonial development. Fitzmaurice, *Life of Shelburne*, gives a good account of his work. The beginning of British activity in the West dates back to 1748 with the formation of the Ohio Company. See Alden, *New Governments West of the Alleghanies before 1780*. November 11, 1761, the Board of Trade established the principle of buying lands of the Indians before settling them, but did not annul any former grant. Charles Townshend had been president of the Board of Trade, and possibly was the author of the first attempt to form a western policy. He early favored a limitation of colonial rights. Fitzmaurice, *Life of Shelburne*, says that he wished to leave fifteen regiments in America.

¹⁰Alvord, *Genesis of the Proclamation of 1763*. (*Mich. Hist. Col.*, XXXVI, 23.)

Royal Proclamation of 1763, the Treaty of Fort Stanwix in 1768, and the Quebec Act of 1774.¹¹ The first of these was but a temporary arrangement until a consistent western policy could be worked out. It established an arbitrary government for the Floridas and Quebec, but promised popular representation as soon as their "state and circumstances" would permit. The southern boundary of Quebec was drawn from the south end of Lake Nipissing to the intersection of the forty-fifth parallel with the St. Lawrence River, and the northern boundary of West Florida was placed on the thirty-first degree of north latitude. The intervening territory, bounded on the east by the Alleghanies, and on the west by the Mississippi, was reserved "for the present" in possession of the Indians. The proclamation forbade any governor or commander-in-chief "to grant Warrants of Survey, or pass Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the Atlantic Ocean from the West or North West," altho provision was made for the purchase by the government, of the lands which it had closed to its subjects.

In spite of the restrictions of the king's proclamation the Americans at once began to push their settlements westward.¹² It was not long, however, before trouble arose between the Indians and the frontiersmen and soon became so serious that the British ministry was again obliged to interfere. The Treaty of Fort Stanwix, opened to settlement the upper valleys of the Ohio and Tennessee Rivers and into these regions frontiersmen quickly pushed their way. So rapid was their immigration that by the outbreak

¹¹For the first of these see *Canadian Archives Report*, 1906, p. 119; for the second, Alvord, *The British Ministry and the Treaty of Fort Stanwix* (*Proceedings of State Hist. Soc. of Wisconsin* for 1908, pp. 165-183); for the third, Coffin, *The Province of Quebec and the Early American Revolution* (*U. of W. Bulletin*, I, no. 3, 1896).

¹²For discussion of American attempts to establish themselves west of the Alleghanies see Alden, *New Governments West of the Alleghanies before 1780*.

of the Revolution the forests of Kentucky and Tennessee contained a population large enough to dispute British claims to ownership.

In regard to the lands north of the Ohio a different rule was followed. Settlements were persistently discouraged, and throughout its whole extent, this region was peopled only by Indians and a few hundred French "habitants" gathered together in drowsy, ancient villages.¹³ Across its prairies roamed fur traders of English, French, and Spanish nationality, knowing no law but their own wills. Altho this country was not open to settlement, it was still regarded as belonging to the thirteen colonies until, in 1774, their titles were swept away. The Quebec Act of that year incorporated the country north of the Ohio and west of the Alleghanies with the province of Quebec, and to the English colonists it appeared that they were to be forever barred from the vast regions behind them. By this act half of the back countries was definitely separated from the influence of Anglo-Saxon institutions and intrusted to the arbitrary rule of a military governor under French law. Protests were unavailing, but the enforcement of the act, together with other unpopular measures of the royal government, was fast driving the colonies to rebellion.¹⁴

These acts of the British ministry divided the conquests of the Seven Years' War into four districts, each of which was to be a distinct issue in the diplomacy of the Revolution. Canada, with its distinctive population and institutions, was not in sympathy with the ideals of the English colonies; but the ultimate possession of it was, to the end of the struggle, a matter of doubt. The old Northwest, as yet unpeopled, was still claimed, under their charters, by the seaboard colonies. Eastern Louisiana was

¹³The chief centers of French settlement were Vincennes on the Wabash, and Cahokia and Kaskaskia on the Mississippi. The *Cahokia Records* and the *Kaskaskia Records* of the era of the Revolution have been edited by C. W. Alvord, but the material relating to Vincennes has never been satisfactorily arranged.

¹⁴Van Tyne, *American Revolution*, 23.

held under the same title, and with less contradiction, by Virginia, the Carolinas, and Georgia. The Floridas on the south, like Canada on the north, formed a colony, distinct in character and government.¹⁵

Beyond the Mississippi stretched the unexplored domains of Spanish Louisiana. Only a few years before, it had been the pride of the French colonial empire, but had since been ceded to Spain as compensation for her losses in the Seven Years' war. New Orleans was its most important post, and controlled the commerce of the Mississippi. Other Spanish villages were scattered up the river as far as St. Louis, which had become a refuge for the French who desired to escape the rule of the British across the river. It was the natural outlet for the trade of the Illinois country and had become a serious menace to British influence in that region. So strong were the French in this region, that, in 1769, the commander of Fort de Chartres complained that, in spite of all the efforts of British traders, backed by their country's soldiers, they carried off all the trade, and influenced the Indians against the English to such an extent as to threaten another Indian war.¹⁶

¹⁵The population of West Florida was largely French and Spanish, and was held in subjection by powerful garrisons of English troops. In addition there was a considerable number of English traders along the Mississippi. The chief centers of British influence were Pensacola, Mobile, and Natchez. Hamilton, *Colonial Mobile*.

¹⁶"Notwithstanding the immense sums spent on taking post at Ft. de Chartes, and the length of time we are said to be in possession of the Illinois, the French still carry away all the trade They go up our rivers, introduce French manufactures in the Country, and influence the Savages against us by which means, unless these parts are established as represented, we shall soon be embroiled in another general Indian War." Lt. Col. Wilkins, commander at Fort de Chartres, to the secretary of war. December 5, 1769. (*Colonial Office* 5, 88, p 175.) The Proclamation of 1763 was not able to stop the Pontiac War, and the Treaty of Fort Stanwix in 1768 did not allay all discontent among the Indians. It was only when the Revolution broke out that the Indians took the side of the English as less dangerous to their interests than the Americans.

Altho the French people still possessed an active interest in their ancient empire, their rulers had given up all thought of regaining it. Louis XV regarded New France and Louisiana as irretrievably lost, and wished to oppose Great Britain with the old system of continental alliances, and there were many to support this view.¹⁷ Altho there is no evidence that Choiseul aimed at the restoration of the French empire in the New World, it is apparent that he did regard America as the most easy and most natural ground on which to work out the humiliation of the ancient rival of the House of Bourbon. With the British in command of the seas he looked to America as the battle ground on which to dispute this supremacy. He was not alone in realizing the dangers of dissension within the British Empire,¹⁸ but the blindness of George III in provoking war aroused in his mind the greatest astonishment.¹⁹

Choiseul was convinced also that the terms of the Treaty of Paris meant revolution in America, and he resolved to keep himself informed regarding conditions there. Secret agents were sent into the English colonies with

¹⁷Perkins, *France in the American Revolution*, 20. I have looked through the documents in the French archives but I find no mention by a responsible member of the government of any wish to regain the old dominions of France, altho there are several memorials presented to the ministry at various times which urged the retrocession of Louisiana or at least a French protectorate over it. (See p. 17, note 26.) It is probable that public opinion would have favored this action. The *Memoire sur la Louisiane par Vergennes* which advocated the retrocession of both Louisiana and Canada is undoubtedly a forgery. See p. 30, note 11.

¹⁸Vergennes told Stormount, the British ambassador to Paris: "I was at Constantinople when the last peace was made. When I heard the conditions I told several of my friends there, that I was persuaded it would not be long before England would have reason to repent of having removed the only check that could keep the Colonies in awe." Stormount to Rochford, October 31, 1775. (*F. O., France*, 542, no. 19, Stevens, *Facsimiles*, XIII, 306; Circourt, III, 1.)

¹⁹Wharton, *Dip Cor.*, I, 371, note.

instructions to report every indication of discontent,²⁰ and even French naval officers in American waters described conditions for the eager ears of the French minister.²¹ The writings of prominent Americans and even the sermons of New England ministers were carefully searched for evidences of disaffection, and American merchants in French ports were interviewed in regard to the attitude of the colonists.²² London, too, furnished the latest intelligence. In the French archives are bundles of reports concerning America, gathered from every source.

Choiseul did not limit his interest to the English colonies, but gave attention as well to the old French provinces of Canada and Louisiana. The French Canadians, however, were well satisfied with British rule and not at all disposed to rebellion.²³ Louisiana, on the other hand, was a hotbed of discontent and disaffection; this was systematically reported to Paris, and the discontented element probably received encouragement from Choiseul's agents. The knowledge of the cruelty and tyranny of Spain was public property in France, and led to a strong demand for the retrocession of this province²⁴ to its former mistress

²⁰Kapp, *Life of Kalb*, 43. Choiseul sent over Pontleroy in 1764 on a tour of observation and he returned in 1766. In 1767 Kalb was sent to America to learn the intentions of the people and their needs in case of war. He was instructed to learn the strength of their fortified places, their facility in securing supplies, their plans, the character of their leaders, and any other information likely to prove useful. Kalb made several reports, the first in January, 1768. (Kapp, 46-55.)

²¹See memorial entitled "*D'Estaing propose la liberté de la Louisiane sous le protectorat de la France*," March 10, 1769. (*Margry Collections, Nou. Acq. Françaises*, 9309, fol. 8.)

²²Kapp, *Life of Kalb*, 45.

²³Kalb's report of January 20, 1768, Kalb reported that the French Canadians were no longer in sympathy with the mother country. They were becoming prosperous under British rule and were intermarrying with the English population. Kapp, *Kalb*, 67.

²⁴The cruelties of the Spanish governor, O'Reilly, who became governor of New Orleans in 1769, aroused great indignation in France and there were urgent demands that France interfere. Gayarré, *Louisiana*.

or at least that it be declared under the protection of the government at Versailles. The French archives during this period contain many documents on the subject, of which the most important one is generally attributed to Admiral D'Estaing.²⁵ The author describes in glowing terms the climate and resources of Louisiana which, he declares, extends as far as "the Illinois, and is capable of supporting an immense population." The Mississippi Valley, argues the author, is of vital importance to Spain for the protection of Mexico. How could this barrier be made more effective? Not by reducing it to the full control of Spain, under whose government the population would remain scattered and restless, and ready to submit to the more liberal rule of Great Britain. A better way, insists the writer, is to allow the people of Louisiana to govern themselves under the protection of France and Spain. The reason for this revolutionary proposal is explained in the memorial. The example of a free republic in the Mississippi Valley, it was argued, would encourage the English colonists to revolt, and France could then enjoy the commerce of all America without the expense of maintaining colonies. Furthermore, while Louisiana was dissatisfied she would offer no opposition to British aggression, but if granted her

²⁵"*D'Estaing propose la liberté de la Louisiane sous le protectorat de la France.*" (*Margry Collections, Nou. Acq. Françaises*, 9309, 8) Other documents on this subject are the "*Memoir de Poterat tendant a mettre la Louisiane sous le protectorat français.*" (*Memoires et Documents, Aff. Etr. Fond Divers, Amerique*, II.) There is also a letter from a M. Francis, dated October 21, 1763, describing Lord Egremont's plans regarding "Accadia, Canada, and the Floridas." (*Arc. Aff. Etr. Angleterre*, 481, fol. 103.) This name suggests the J. B. Lazarus Francis, the agent of Beaumarchais in America. There is also a letter from a M. de Neyon, a French officer at Fort de Chartres, to Loftus, conceding to the English permanent possession of the Illinois. (*Arc. Col. Louisiane*, 44, div. 2 18b.) There was also mention of a M. Larnier who was in the Illinois in the early seventies. (*Arc. Aff. Etr. Angleterre*, 501, fol. 320.) Another important document is a "*Memoir que regarde la Louisiane*," dated 1763. (*Arc. Col. Louisiane*, vol. 43.)

independence she would make every effort to preserve it.²⁶

The many suggestions regarding Louisiana probably received consideration from Choiseul, altho it is unlikely that they were officially discussed in the cabinet.²⁷ The mercurial mind of the French minister had already

²⁶L'Evenement singulier; . . . arrive à la Nouvelle Orleans deviendra s'il est saisi legerme heureux de () administration de l'Empire Britannique aider l'Amérique Sepentrionale a s'en separer accroître le desire qu' ellè parait en avoir, montrer a ses colons qui veulent être libres qu'euse; leur faire voir sous leurs yeux le spectacle intéressant de deux Potentates qui pardonnent, qui protegent, et qui daignent de concert proferer le mot de paussant de liberté. ce serait faire plus que econquerir une des provinces anglaises de l'Amérique. Le choc de la guerre ne servirait qu'à rafermer les liens qui attachent encore ces countreées à la metropole, c'est à l'exemple () bonheur à les entrainer vers le but ou elles tenent déjà. c'est par la confiance qu'elles oseront plus et plus tot: mais cette confiance en des Monarques que des préjuges populaires leurs ont fait regarder comme des despottes, ne peut s'acquérir que par une preuve incontestable, il n'en peut exister une plus persuasions que la liberté de la Louisiane les citoyens de la Louisiane gouvernir par eux mêmes mais avec le(s) lois donnees par la parmission de l'Espagne et sous la guarentee de la France, ne dependraient que de leur intelligences pour tout ce que regardirait les details de la justice de l'administration, et de l'accroissement qui devrait être le point de vue unique de leur regime, mais des commissaires soutenus, et autorises par les deux puissances veuleraient a ce que l'ambition des particuliers ne causera point de secousses dans les fibres naissants de cette petite republique Les colons naturalises Espagnoles par la cession, et français par leur origin, conserve les droits de commerce un territoire salubre dont la population est presque aussi prompte que cette du Canada, fertile dans tous les genres commestibles, qui s'etend jusqu'aux Illinois C'est je repete, armer leur Amérique contre eux mêmes." *D'Estaing propose la liberté de la Louisiane sous le protectorat de la France*, Versailles March 10, 1769. (*Margry Collections, Nou. Acq. Françaises*, 9309, 8.) Bancroft gives extracts from this document but attributes it to Choiseul. *United States*, V, 339.

²⁷I can find no traces in the French archives of a cabinet minute relating to the West during this period. Bancroft says that Choiseul sent the memorial described above (note 26) to Du Chatélet, the French minister to London. (*United States*, V. 339.) He is probably right, altho Choiseul may not have intended the memorial to express his own opinions. Bancroft also quotes Chatélet as approving the ideas of the memorial. (*Ibid.*, 340.) It is probable that the whole question excited lively interest at the French court altho no official action was taken.

turned to other schemes for the humiliation of England, and the old king Louis XV. was sunk too deep in debauchery and disease to care.²⁸ Choiseul's investigations had piled up a mass of documents, but they did not result in a definite policy either to promote insurrection in America, or to leave the colonies alone.²⁹ The vacillating minister dropped his schemes before they could bear fruit, and ere a successor could develop anew the policies of intervention, the War of Independence was well under way; and the course of events had carried it beyond the control of French diplomacy.

With the abandonment of French activities in the Mississippi Valley, the whole territory was left to the English and Spanish. Spain held the west bank of the river and within her domains were the important posts of St. Louis and New Orleans, the latter of which gave her control of the river's mouth. On the lower Mississippi the British balanced the strategic positions of Mobile and Natchez against New Orleans, but in all the wilderness north as far as the Illinois posts of Kaskaskia and Cahokia there was not a single British stronghold. In the years between 1763 and 1774 the population of Spanish Louisiana increased at the expense of the Illinois country.³⁰ British

²⁸Perkins, *France in the American Revolution*, 32.

²⁹In his efforts to conquer Corsica, Choiseul lost sight of America. When Kalb returned from his mission to America, Choiseul refused to see him and declared that he wanted to hear nothing more of America. Soon after this, however, he announced that in retaliation for English aid to the Corsicans, he would assist the Americans. (Kapp, *Kalb*, 72.) He was soon threatening to involve France in war with Great Britain over the Spanish claim to the Falkland Islands, when he was dismissed. Perkins, *France in the American Revolution*, 31.

³⁰Immediately after the treaty of 1763 many of the French living in the Illinois country crossed to the western bank of the Mississippi. Professor Alvord believes that as soon as the British actually occupied the country this migration stopped. *Cahokia Records*, Introduction. (Illinois Historical Collections, II.) In 1787 an investigation by Congress showed fewer than 600 inhabitants in the Illinois, of whom 50 were Americans, about 250 slaves, and the remainder French and English. *Journals of the Continental Congress* (MSS.), XLVIII, fols. 48-52, 165. Bancroft gives the population of the Illinois in 1768 as 1358. *United States*, III, 319.

traders, however, came with British soldiers to the old Northwest and entered into competition with the French and Spanish across the river. At first the newcomers were helpless against the skill and influence of their rivals,³¹ but within a few years they controlled the trade of the Illinois.³²

During the years before the outbreak of the American Revolution the British and Spanish along the Mississippi were mutually distrustful. There were many points of dispute between the two nations, and it seemed that at any time there might be an outbreak of war.³³ Both sides saw the importance of the Mississippi Valley, and both made preparations to preserve and, if possible, to extend their influence there. The Spaniards strengthened their defenses along the west bank of the river, and the British, ever alert, prepared to checkmate them.³⁴ Orders were given that, in the event of war, British troops should at once seize New

³¹Col. Wilkins to secretary of war, December 5, 1769. See above, p. 13, note 16.

³²Gayarré, *History of Louisiana*, III, 106. In 1783 the Canadian merchants protested vigorously against the surrender of the Northwest Territory because "it cuts off all the trading Posts, and almost all the Indian Nations, the trade with whom was the grand object of the Commercial Intercourse between Great Britain and the Province of Quebec." *Representation of Canada Merchants to Lord Shelburne*, January 31, 1783. (*Shelburne MSS. in Lansdowne House; E. L. S.*, 72, fol. 459. Copy in *Peace Trs.*, Lib of Congress, XIII.) The extent of British trade is shown by the fact that in one month in 1776 the governor of Louisiana captured fifteen British trading vessels. See p. 65. The French archives also contain frequent references to merchants ruined by British competition.

³³In 1770 there was a dispute between the two countries over the Falkland Islands which threatened war. Perkins, *France in the American Revolution*, 31. In 1774 there was a dispute between Spain and Portugal "de leurs limites sur le Rio St. Pedro et vers l'Uruguay." Doniol *Transcripts Nou. Acqs. Franc.* 6482, 36. France supported Spain, Great Britain Portugal. *Ibid.*, 31, 39.

³⁴"The proceedings of the Spaniards in the different Posts they are forming on the Western side of the Mississippi cannot be too narrowly watched." Hillsborough to Gen. Gage, September 28, 1770. (*C. O.* 5, 88, no. 35, fol. 277.)

Orleans and get possession of Louisiana.³⁵ For several years the two nations preserved an armed peace along the Mississippi. New questions of dispute arose,³⁶ and at the time of the outbreak of the Revolution, war was still threatening. The court of Madrid, however, was anxious for peace,³⁷ and, with the beginning of insurrection in the colonies, the British commander felt it safe to withdraw the troops in the Northwest for service in the East.³⁸ Spain, however, was not satisfied and the disputes between the two countries were allowed to drag on until they led to war.

Events in the East soon directed all eyes toward Boston, but at the same time the importance of the outlying districts increased. The control of the Floridas, of Canada, and of the Mississippi Valley became at once a matter of vital interest, for if they could be brought into rebellion British power in America would receive a staggering blow. In none of these provinces was the population large enough and sufficiently homogeneous to organize an independent revolt, but the American insurgents were anxious to get their assistance. There were many reasons, however, to prevent both the Floridas and Canada from following the lead of the English colonies. In the southern province

³⁵Hillsborough to Gage, January 2, 1771. (*C. O.*, 5, 88, no. 89, fol. 1.)

³⁶The question of the boundary between the possessions of Spain and Portugal in South America. See note 34.

³⁷"S. M. Cath ne m'a pas dit qu'elle desirait une mediation mais vraisemblablement, que si la France d'accord avec l'Angleterre l'offrant a ce Monarque il l'accepterait, car il est certain qu'il desire sincerement le maintien de la paix."—Ossun, French ambassador to Madrid, to Vergennes, December 5, 1774. (*Doniol, Transcripts, Nou. Acq. Franc.*, 6482, 49.) See also p. 8, note 4.

³⁸"Lord Dunmore has sent me a provincial major by the name of Conoly, in whom his Lordship puts great Confidence to Impart a Project of raising the People of Detroit and other Settlers in the interior Country, who with the Indians and the two Companys of the 18th Regiment at the Illinois might make a diversion on the Frontiers of Pennsylvania and Virginia I will do all I can to promote its success. . . . I have sent Lord Dunmore Letters for Capt. Lord of the 18th Regiment, ordering him to move the Companys of said Regiment from the Illinois to Detroit" Gage to Dartmouth, September 20, 1775. (*C. O.*, 5, 92, no. 37, fol. 508-560.)

the restless spirits who favored revolt were overawed by the strong garrisons which the British maintained to protect the country from the Indians and Spaniards, while the great mass of the population sympathized with Great Britain. Concerted action with the insurgents was furthermore made impossible by the unexplored wilderness to the north. Under such conditions, the conquest of the Floridas by the Americans was possible only with foreign assistance. Spain, however, had not forgotten her ancient possession of them, and regarded them of the utmost importance in maintaining control of the Gulf of Mexico.³⁹ Due to these circumstances American projects against the Floridas were destined to prove abortive, and in spite of every effort, these provinces were to serve only as a pawn to tempt the greed of Spain.

In the minds of many Americans, Canada held a place of greater importance than the Floridas, altho there were equally serious difficulties in the way of union. The natives were of alien race, and twelve years before had fought desperately against the men who would now call them brothers. Their difference in religion had only recently been emphasized in the bitter dispute over the *Quebec Act*, and the French Canadians, long accustomed to paternal government, looked with indifference on the New England ideas of liberty. They were well satisfied with the improvements which the English had made in their condition,⁴⁰ and the pleas of insurgent agitators found no response in their minds. French civil law was still maintained, and the Roman Catholic religion virtually established,⁴¹ while the annexation of the territory north of the

³⁹See p. 80, note 37.

⁴⁰Kalb's report to Choiseul, 1768. Kapp, *Life of Kalb*, 65-70.

⁴¹For description of the organization of the province of Quebec see Coffin, *The Province of Quebec and the Early American Revolution*. Kalb wrote in 1768 that the Canadians would not unite with the other colonies in revolt. Kapp, *Life of Kalb*, 68.

Ohio flattered the pride of the Canadians⁴² and gave them a practical monopoly of the fur trade.⁴³

The measures favoring the French in Canada aroused, among the English of that province, a spirit of disaffection, which held out to the revolting colonies a promise of union. The governor-general was alarmed at the threatening attitude of the English Canadians and took measures to repress insurrection.⁴⁴ The Continental Congress, on the other hand, was anxious to bring all British America under its sway, and in October, 1774, adopted resolutions urging the Canadians to unite with them in opposition to the measures of the British government.⁴⁵ In the February following agents of Congress arrived in Montreal, where they held a "meeting of Merchants and most of the English, Scotch, and Irish of Montreal at the Coffee House . . . and [these] were urged by the New Englanders to send 2 delegates to Congress at Philadelphia."⁴⁶ These agents reported that Canada was not in condition to resist attack, that the English population was ready to revolt, and that the French would remain inactive.⁴⁷

Congress, thereupon, determined to send a military expedition against Canada, in the hope of inducing it to

⁴²Kingsford, *History of Canada*, V, 251.

⁴³ . . . "it [the treaty of 1783] cuts off all the trading Posts and almost all the Indian Nations, the trade with whom was the grand Object of the Commercial Intercourse between Great Britain and the Province of Quebec. . . . Consequently the whole trade with the Indians must be entirely cut off from the Province of Quebec." Representation of the Canada Merchants to Shelburne, January 31, 1783. (*Shelburne MSS.*, E. L. S., 72, fol. 459; copy in *Peace Transcripts*, XIII.)

⁴⁴Carleton, the governor-general of Canada, wrote Dartmouth, January 12, 1775, of "endeavours being made by certain of his Majesty's British subjects to kindle in the Canadians the spirit that reigns in Massachusetts, and seems to run through most of the other colonies." *P. R. O., Col. Cor., Quebec*, II, 24. Quoted in Stephens, *Chronological Index*.

⁴⁵*Journal of Continental Congress* (Ford ed.), I, 62.

⁴⁶Extract of letter from Montreal, April 6, 1775. (*P. R. O., Col. Cor. Quebec*, II, 48; quoted in Stephens, *Chronological Index*.)

⁴⁷Kingsford, *Canada*, V, 251.

join the rebellion. Washington agreed to this, and believed also that the movement would be of strategic value.⁴⁸ To this expedition he gave much time and thought, for he felt that it would have a "decisive effect on the public interests." If the Continentals should conquer Canada, he was certain that the plans of the British ministry would fail.⁴⁹

Governor Carleton was greatly alarmed at these efforts of Congress to win over the Canadians. He admitted that the Americans were "only too successful" in their efforts "to debauch the minds of the Canadians and Indians." He complained that the people in general seemed "to think it their interest that these Wretches should become Masters of the Country, though the Gentlemen, Clergy and most of the Bourgeois, have manifested great Zeal and Fidelity for the King's service." Carleton was in despair. He declared that the whole country was "on the eve of being overrun and subdued."⁵⁰ Gage was more optimistic, however, and felt that, unless the whole body of the

⁴⁸Washington, *Works* (Ford ed.), III, 238.

⁴⁹*Ibid.*, III, 120. The colonial assemblies had early sent detached expeditions towards Canada, and Washington resolved to bring these together in a systematic invasion. On August 20, 1775, he wrote to General Schuyler communicating a plan of attack by way of the Kennebec River to Quebec. He hoped this would make a diversion and prevent General Carleton from defending both Montreal and Quebec. (*Ibid.*, 124.) He instructed Arnold to do all in his power to win the good will of the Canadians "by just and honorable conduct," and to treat them and the Indians as friends and brothers. He, himself, issued a proclamation urging the Canadians to join in the revolt. (*Ibid.*, 126.) He also suggested to Congress that the Canadians be invited to send delegates to that body. (*Ibid.*, 238.) In accord with Washington's ideas Montgomery urged the Canadians to form "a provincial convention to maintain the civil and religious rights of the colonies." (*Ibid.*, 239.)

⁵⁰Carleton to Gage, Montreal, September 16, 1775. Carleton went on to state: ". . . . I had great hopes of holding out for the Year, tho' I seemed abandoned by all the Earth, had the Savages remained firm; I can not blame these poor People for securing themselves, as they see Multitudes of the Enemy at Hand [and] no succor from any Part. . . ." *C. O.* 5, 92, fol. 673; copy in *Bt. Trs.*, 123, fol. 405, L. C.

Canadians went over to the provincials, the American expedition must fail.⁵¹

News of the fall of Montreal further alarmed the British commanders and aroused a corresponding elation among the Americans. Many of the Canadians went over to the side of the insurgents, and for a time it seemed that the whole province would take the side of Congress. In the revolting colonies great importance was attached to the expedition against Quebec, and Washington wrote that, upon its outcome, would probably depend the issue of the whole war.⁵² The failure of Montgomery and Arnold was a bitter disappointment to him, and he felt that the colonies had lost a great chance for a speedy and decisive victory, and that now the struggle must be long and bloody.⁵³ For a time, however, he did not give up hope of affecting the conquest of Canada,⁵⁴ but military events in other colonies became more serious, the American forces were withdrawn, and the province of Quebec was lost to the Revolution.

Only the West, then, offered opportunities for expansion. In this direction population naturally flowed, and, altho without legal sanction, frontiersmen had already spread over the region south of the Ohio, and established settlements in its rich valleys. To these settlements, as well as to the territory north of the river, the colonists laid claim by right of their charters.⁵⁵ Against these charters was the legal force of various Indian treaties and the Quebec Act. Furthermore, in the Northwest the British held a quasi-military authority which the colonists were in no position to dispute. The country south of the Ohio, however, did not offer so difficult a problem. The British had no military control within its limits, and there was no one to dispute the claims of Virginia and North Carolina.

⁵¹Gage to Dartmouth, September 20, 1775. (*C. O.* 5, 92, no. 38, fol. 571.)

⁵²Washington, *Works* (Ford ed.), III, 381.

⁵³*Ibid.*, IV, 47, 103, 108, 174.

⁵⁴*Ibid.*, IV, 195, 218.

⁵⁵*Journals of Continental Congress* (Hunt ed.), XVIII, 939.

Altho settlers were pouring in, the outbreak of war had, as yet, prevented the organization of a government.⁵⁶ It was not long, however, until the inhabitants of Tennessee and Kentucky demanded some organization, and established the Watauga Association and the County of Kentucky.

During the early days of the Revolution, the West received scant consideration from the leaders of the rebellion. Congress concentrated its armies in the East and the West was left to shift for itself. In no sense, however, did the colonies abandon their claims to the valley of the Mississippi. Washington, Franklin, and Jay all maintained the right of the Americans to the West,⁵⁷ and there probably could be found no one among the patriots who did not regard the back countries as a part of the colonial dominions, and this very unanimity doubtless forestalled discussion.

The British, however, were the first to see the importance of the West in the war and were quick to take advantage of it. General Gage planned to raise the settlers of the Northwest to assist the Indians and some regular troops from the Illinois in an attack on the frontiers of Pennsylvania and Virginia.⁵⁸ Supplies were to come from Pensacola up the Mississippi and Ohio, and with the cooperation of Lord Dunmore in Virginia, Gage planned to cut the colonies in two and restrict the area of rebellion to New England. This plan was never carried out, but the

⁵⁶See Alden, *New Governments West of the Alleghanies before 1780*; Turner, *Western State Making during the Revolution*, in *American Historical Review*, I, 20, 70.

⁵⁷In July, 1775, Franklin drew up a plan of confederation to include, not only the thirteen colonies and Canada, Nova Scotia, and the Floridas, but the West Indies and Ireland as well. (*Works* (Smyth ed.), VI, 425.) This plan was presented to Congress but never acted upon. Altho no specific mention was made of the West it is evident that Franklin thought it unnecessary to discuss it. Jay declared that he had long believed that Congress should grant Spain the navigation of the Mississippi below "our territories." *History of the Spanish Mission*; Jay, *Life of Jay*, I, 100.

⁵⁸Gage to Dartmouth. See p. 20, note 38.

British were successful in keeping Detroit and the posts along the Great Lakes and the Mississippi, which, with the control of the Floridas, enabled them to threaten continually the vast regions between.

Thus conditions at the outbreak of the war limited the area of rebellion and threw the conquests of the Seven Years' War once more into the jackpot of world diplomacy. These conquests were now divided into four zones, each of which presented a distinct problem. The Floridas were definitely included within the scope of Spanish diplomacy, while the claims of Spain and the United States to the territory south of the Ohio made impossible an alliance between these two powers. The old Northwest was of vital interest to the new republic, while Canada, as the last stronghold of British power in America was sure to receive great attention. Each, then, was a distinct issue in the diplomacy of the American Revolution, and the outcome was made still more uncertain by the policy of Vergennes, who, through the humiliation of Britain, was seeking to brighten the prestige of his beloved France.

CHAPTER II

VERGENNES AND SPANISH DIPLOMACY

The accession of Louis XVI to the throne of France gave renewed life to the worn out diplomacy of Versailles. The nominal head of the new ministry was the aged and dissolute Maurepas, but the real leadership fell to the astute and energetic minister of foreign affairs, Charles Gravier, comte de Vergennes.¹ Vergennes had spent his active life in diplomacy and was called to the foreign office from an embassy to the court of Sweden. He had none of the characteristics of the supple Choiseul, but was a man of resolute purpose, blunt and direct in speech, and cold and haughty in manner. His temper, when once aroused, was violent; but his anger was soon appeased; and he was, in general, patient and courteous. Particularly noticeable was his lack of that vivacity and optimism so general among Frenchmen; and his appearance gave the impression of one laboring under a load of responsibility and anxiety. He was, however, a man of clear understanding and definite aims, and one who would pursue unhesitatingly to the end a policy upon which he had once decided.² Altho not a great man, he had an infinite capacity for taking pains, and would often labor at his desk from early in the morning till late at night. He has been described, and perhaps justly, as having for his trump cards "subtlety,

¹Turgot was the only serious rival of Vergennes and the latter always carried his point over the advice of the minister of finance. Doniol has the same view of the position of Vergennes. *Histoire*, I, 249.

²"Whether the policy which he [Vergennes] pursued was the boldest which he could have adopted no man now possesses the means of judging. . . . But having adopted it, it is but justice to this minister to admit that he pursued it with singular equanimity, firmness, and temper." *North American Review*, XXXIII, 471. Wharton attributes this article to Edward Everett. *Dip. Cor.*, I, 243 et seq.

wiliness, cleverness, and sagacity,"³ but, at the same time his honesty and loyalty were beyond suspicion. Narrow in outlook, his one passion was patriotism, and he gave to France a life of single-hearted devotion. His was not a lovable character, but his uprightness and ability gained for him the respect and friendship of such opposite characters as the frivolous Marie Antoinette, the dull Louis XVI, and the shrewd and philosophic Franklin.⁴

When Vergennes took up the slackened reins of power, France was reduced to impotency in the councils of Europe. The new minister saw clearly the depths to which his country had fallen and felt keenly her degradation. "The deplorable peace of 1763," he informed his king, "the partition of Poland, and in fact, other causes equally disastrous, have struck the greatest blows to the respect for your crown."⁵ Great Britain, he complained, had gained most from the misfortunes of France, for she had conquered Canada, Louisiana, and other important possessions of the Bourbons. To retrieve the fallen glory of his country he would strike at the British Empire. To restore French prestige through the humiliation of England was the key-stone of his policy, and it was this which led him to suggest that encouragement and aid be given the British colonies in their opposition to the mother country.⁶ It was this idea, also, which led him in 1778 to recognize the inde-

³Hale, *Franklin in France*, II, 80.

⁴This characterization of Vergennes is drawn from his letters and despatches. Franklin had a high appreciation of his character. In 1781 he wrote of "the sincerity of this upright minister, who never promised to me any thing which he did not punctually perform". (*Works* (Smith ed.), VIII, 302.) At the news of Vergennes's death Franklin again wrote: "So wise and good a man, taken away from the station he filled is a great loss, not only to France but to Europe in general, to America and to mankind." (*Ibid.*, IX, 575.) For a common idea of Vergennes see Jay's characterization in *Magazine of American History*, XIII, 31.

⁵Translation. Doniol, *Histoire*, I, 13.

⁶Hale declared that Vergennes's object was to weaken Great Britain, "to make good, in a measure, the territorial losses of the Seven Years' War, that is Canada . . ." *Franklin in France*, II, 44.

pendence of the United States, and at the same time to make every effort to keep the alliance and friendship of Spain.⁷

From accounts of conditions in America, Vergennes was sure that a rupture was at hand. He was not satisfied with De Kalb's report; and, to make his information more exact, he determined to send over an agent of his own.⁸ His choice fell upon a gentleman named Bonvouloir who was sent secretly and with no credentials. Vergennes recognized the jealousy felt by the colonists of French influence and their fear of aggression, and he instructed his agent to inform them that France had no designs on Canada.⁹ This promise Vergennes doubtless made in good faith, for he cared nothing for wide colonial dominions which would bring only trouble and expense.¹⁰ His chief interest was in small and productive colonies and in advantageously situated commercial ports.

The revolt of the American colonies gave to the New World an international importance such as it had never before possessed. Always before, it had been a minor factor in great European struggles, but now it became the center of a new conflict, fought out on different lines. In previous

⁷Doniol, *Histoire*, I, 13.

⁸"Quoiqu'on ait voulu faire honneur a M. le duc de Choiseul d'avoir preparé cette revolution je dois dire avec verité sans pretendre enlever rien a sa gloire qu'il n'y a en aucune part. . . . Bn de Kalb qui apres la paix avait voiaagé de son ordre dans les Colonies angloises n'avoit d'autre commission qui de reconnoitre les dispositions de ces peuples. La correspondance qui j'ai Sous ma main n'annonce pas même des découvertes fort importantes." Vergennes (in his hand) to the king, 1776. Vergennes went on to explain that new conditions had arisen and it was necessary to have some one on the ground to report new developments. *Aff. Etr. France*, 446, no. 33, Doniol, *Transcripts, Nou. Acq. Francs.*, 6494, 55.

⁹Wharton, *Dip. Cor.*, I, 333.

¹⁰"La France a des colonies dans la proportion qui convient a sa population et son industrie. Plus seroit une charge plus tost q un benefice. Si la perte du Canada lui a été sensible elle doit la moins regretter depuis que labandon quelle a été obligée d en faire est devenu le signal de revolte des provinces angloises sur le continent." Vergennes to Aranda, April 26, 1777. (*Esp.*, 584, no. 40.)

wars it was merely a question of whether Great Britain or the Bourbons should extend a colonial empire, but now the matter in hand was the birth of a new nation. Defeated in the past in every struggle with a united Britain, France now saw in a divided empire her opportunity for vengeance. It was no longer a contest over Canada and Louisiana; the reconquest of these did not enter the dreams of Vergennes; he looked for triumph over Great Britain in the destruction of her commerce, in the dismemberment of her empire, and above all, in forming her richest provinces into a new nation that would be forever a check on British aggression.

The outbreak of open war in America formed a crisis in the diplomacy of France. The moment had come for which Choiseul had waited in vain and towards which Vergennes had pointed his policy. The report of battle on the commons of Lexington warned him that the time for action was at hand. While it was clear that France had a great interest in the revolt, there still arose in the mind of Vergennes many questions. Would the colonies declare their independence? If they did, would they fight with determination to maintain their declaration? Should France offer them aid; and, if so, what should be its character? Would Spain join in a war to free rebellious colonies? What recompense should the two crowns expect for their assistance? With these questions in mind Vergennes began to formulate a definite policy.

In two memorials written at this time may be read the fundamentals of his decision to which he clung throughout the succeeding years.¹¹ The first is headed "Reflexions

¹¹There is a third memorial entitled "*Memoire Historique et Politique sur la Louisiane*" par M. de Vergennes, ministre de Louis XVI, and published in Paris in 1802. This memorial declared that the war then going on in America was of vital interest to France and Spain, and that the two countries ought to unite on a policy regarding the struggle. The Americans, if successful, were likely to seize the American possessions of Spain and become the dominant power on the continent. The only means of preventing this, continued the memoir, was to restore Canada, Louisiana, and Eastern Louisiana to France. The Indians and Canadians would

Sur la Conduite qu'il convient a la France de tenir a l'egard des Colonies Angloisses, par M. Gerard de Rayneval," and was prepared in the latter part of 1775 for the use of Vergennes.¹² The second bears the title "Considerations sur l'affaire des Colonies anglois de l'Amerique," and was drawn up by Vergennes himself.¹³ The first of these describes in general terms conditions in America, and the interest of France in the struggle; the second sets forth, then be able to balance the ambition of the Americans. Louisiana was useless to Spain, it argued, and that power ought to be glad to surrender it to France in return for a guarantee of her other possessions. It was also necessary for the protection of French commerce. Whatever the outcome of the war between England and her colonies, reasoned the memorial, Europe must intervene. In that case France would be in position to reclaim her ancient possessions in Canada.

This memorial has received importance from the use Professor Turner makes of it in his "Policy of France toward the Mississippi Valley in the Period of Washington and Adams." (*Am. Hist. Rev.*, X, 249.) There is good reason to believe, however, that the whole memoir is a forgery. Turner admits that there was some suspicion of it, but attempts to establish its authenticity by the assertion that "the subsequent actions of Vergennes are entirely consistent with the view that he was the author." He attempts to prove this assertion by reference to Oswald's letter to Shelburne of September 17, 1782, regarding Rayneval's mission to London, and by Godoy's declaration in his memoirs that Vergennes tried "to induce Spain . . . to give to France her ancient colony." The publication of Rayneval's report to Vergennes (Doniol, *Histoire*, V, 135) shows that his mission had nothing to do with the western territories. Godoy's account can not be accepted as decisive. During the Revolution he was but a child and he was hardly more than a youth when he assumed office in 1792. He could have had no first hand information of any such attempt as he describes. He did not publish his memoirs until many years later (1832) when his memory could not have been accurate and he probably confused some French efforts after the Revolution to obtain Louisiana with the name of Vergennes. As will be shown in the course of this study, the policy laid down in this memoir was not in accord with the policy of Vergennes as stated in his authentic papers. He made no attempt

¹²In hand of Rayneval. (*Etats-Unis, Memoires et Documents*, I, no. 4, fol. 59; Stevens, *Facsimiles*, XIII, 1310; Doniol, *Histoire*, I, 243 et seq.)

¹³Dated March 12, 1776. (*Etats-Unis, Memoires et Documents*, I, no. 9; Stevens, *Facsimiles*, XIII, 1316; Doniol, *Histoire*, I, 278 et seq.)

in detail, the confused state of English politics, and argues for a policy unfriendly to Great Britain.

Vergennes and his chief assistant were alike convinced that the rebellious colonies would declare their independence; but the position France should take offered many problems, for a move in any direction was threatened with danger. They were willing to allow both combatants to exhaust themselves without offering any interference, but they foresaw great hazards from a consistent policy of non-intervention. Both declared that, whatever the outcome of the war in America, it would surely lead to another struggle between the Bourbon powers and Great Britain. If the latter power should conquer the insurgents, they argued, she would seek indemnity for her expenses in an attack on the colonies of France and Spain; if defeated, she would but have an additional motive to cover the humiliation by a blow at her ancient rivals. The Bourbon powers could not hope to save themselves by maintaining their neutrality, for no matter how carefully they abstained from interference in the war, the British would still accuse them of aiding the rebels, and use this as a pre-

to obtain territory in America and often disclaimed even to Louis XVI any desires in that direction.

There is other evidence of forgery. The style is not that of Vergennes. Page after page is taken up with historical and geographical details of which we find little in the authentic papers of Vergennes, and there is no part that bears the ear marks of a state paper. The paper also shows an ignorance of political and geographical conditions during the Revolution which can not be attributed to Vergennes. The plainest example is found on page 26 of the memoir. It states that the English will soon get possession of Louisiana and that then "Florida will fall of itself." Vergennes frequently discussed the question of Florida but he never committed the mistake of supposing that it belonged to Spain during the period of the Revolution.

The circumstances of the publication of the memoir are suspicious. In the years from 1800 to 1803 Napoleon was concerned with Louisiana, and the publication of this supposed work of Vergennes would help to justify his conduct in the eyes of the world. On no ground can the authenticity of this memoir be accepted.

text for attack. No faith could be placed in the guarantees of Great Britain, for, declared Vergennes: "L'expérience n'a que trop prouvé qu'ils croient juste et honorable tout qu'ils regardent comme avantageux à leur nation et destructif pour ses rivaux." Vergennes went on to state that there was already talk in England of a popular war against France to allay domestic disputes and extinguish the national debt. France, he declared, had little to fear from an independent republic in the New World, for it would be too exhausted to attempt any aggression for years, and its very organization as a republic would discourage the spirit of conquest, while its people, devoted to industry and commerce, would see the need of peace.

Rayneval urged, moreover, that his country had much to gain from an independent America, for not only would it weaken Great Britain but also increase proportionately the power of France. England's commerce would suffer an irreparable blow, and that of France would increase in importance. Rayneval thought the opportunity favorable also for France to recover some of her lost American possessions, particularly the fisheries of Newfoundland and the Gulf of St. Lawrence.¹⁴ In regard to the restoration of the ancient French empire, he merely remarked: "On ne parle pas du Canada."

No plan that Rayneval may have had for the recovery of New France received any encouragement from Vergennes, altho such a scheme was not contrary to the Bourbon traditions. He did not believe that a French empire in America was again possible; and, if it were possible, he argued, France had already enough colonies for her resources and should

¹⁴In discussing the advantages to France of aiding the Americans Rayneval states:—"elle nous presente comme très probable le recouvrement d'une partie des possessions que les anglois nous ont enlevés en Amérique comme la pêche de terre-neuve, et du golfe de St Laurent, l'Isle Royale &." Stevens, *Facsimiles*, XIII, 1310. Doniol writes instead of "Pêche de terre-neuve," "pêche de terre." *Histoire*, I, 244.

not seek more.¹⁵ A course of aggrandizement in America would arouse the fears of the colonists and they might return gladly to their former allegiance. The suggestion of commercial advantages he passed over likewise without consideration and gave his whole attention to the lowering of English prestige. He would prepare for war and at the right moment strike a decisive blow strong enough to reduce England to the rank of a second class power, and destroy the empire which she had built up with so much "arrogance and injustice."

Vergennes did not think the time was yet ripe for intervention. The warring powers should first be allowed to exhaust themselves and not until the colonies declared their independence should France intervene, for it was not in accord with the king's dignity to ally himself with insurgents. On the other hand France could not delay too long, for there was always the possibility of a reconciliation or sudden collapse of the revolt. Vergennes felt it would be well to encourage the insurgents "par quelques faveurs

¹⁵"Au pis aller la crainte d'une guerre malheureuse qui finiroit par remettre la France en possession du Canada seroit le pouventail le plus certain pour l'Amerique ou le voisinage de notre religion et notre gouvernement est extremement aprehende." Vergennes to Ossun, August 7, 1775 (*Esp.*, 575, no. 15.) See also Vergennes to Guines of same date. (Doniol, *Histoire*, I, 155.) Vergennes wrote to Aranda, March 11, 1777, that since the two crowns were content with their possessions and not ambitious for new conquests, "reste donc celui de cooperer a la foiblessement de la puissance dont elles pourvient redouter la (c) croissement et () quelle seroit tentee d'un faire." (*Esp.*, 583, no. 155.) A month later he expressed the same idea. (*Ibid.*, 584, no. 21.) Again he wrote: "Sa Mte n'hesite pas a declarer quelle ne connoit en Amèrique coe en Europe aucun objects asses seduisant d'acquisition pour compensir a ses yeux les hazards, les calamities et l'epuishment resultans d'une guerre. La France a des colonies dans la proportion qui convient a sa population et son industrie. Plus seroit une charge plus [tost] q'un benefice." Vergennes to Aranda, April 26, 1777. (*Esp.*, 584, no. 40.) In none of his despatches does Vergennes admit any intention to obtain territorial gains in the New World; but he frequently disclaims any such object. The decadence of Spain and the dangers of Great Britain were, in his day, striking proof of the folly of colonies.

secretes et par des esperances vagues" until they should declare their independence and the moment had come for intervention. He would also conciliate the British and lull their suspicions so they would not fear to embark on an expensive campaign; but France must not be too humble for the "Anglais ne respect que ceux qui peuvent se faire craindre."

This was the program of Vergennes which he consistently maintained in the face of all obstacles. He was not animated by any feelings of sympathy for the "patriot cause," altho his hatred of England doubtless inspired a kindlier feeling for the Americans than he would have entertained otherwise. Of far greater propelling power was his desire to humiliate the old enemy of France. He would not seek a pretext for war. It was enough that Great Britain was dangerous, the natural enemy of France, "avide, injuste, et de mauvaise foi," and that she had always sought every means to injure the House of Bourbon. Should not France then seize this opportunity to enfeeble her rival? The humiliation of England; the prestige of France; such was the policy of Vergennes.¹⁶ He did not

¹⁶This memoir of Vergennes is especially important as forming the basis of his whole policy regarding the interests of France. Doniol says of the "Reflexions": "Cette piece était a vrai dire un programme. . . . Le ministre était désormais fixé a ce programme, et il devait l'être avec le conseiller véritable du roi le chef du cabinet. Le cours des choses on le verra n'y changer a presque rien." *Histoire*, I, 249.

Vergennes submitted his memoir to Maurepas, Turgot, and St. Germain, all members of the king's cabinet, and asked for their opinion. (Doniol, *Histoire*, I, 279.) St. Germain replied three days later and advised getting ready for war. Turgot's answer was not ready for nearly a month. His paper of April 6 was a careful statement of the finances of France. He pointed out the immense public debt of the monarchy, and the miserable state of her exchequer, and argued that a war would make impossible for a long time to come certain very necessary reforms. The reply of Maurepas is not certainly known, but Doniol attributes to him a short and concise memoir, a copy of which is found in the foreign office. (*Histoire*, I, 286.)

There is no evidence that Vergennes allowed the opinions of his colleagues to affect his policy. The later discussions on the subject do not

seek to build up the old France, overloaded with colonies to drain the life blood of the nation; that could be left to the worn out empire of Spain and to the shattered might of Britain. He would call into being a new nation, which would be a friend and ally of the Bourbon throne, and a constant menace to the maritime power of the British Empire.

In his plans for wrecking England's power, Vergennes counted on the help of Spain. The two powers had long been in alliance and the Spanish court had not been behind that of Versailles in its hatred of the common enemy. At the outbreak of the Revolution the dispute between Spain and Portugal over the boundaries separating Brazil and Uruguay was unsettled and the governments of Versailles and Saint James were involved. The latter was actively supporting Portugal, while the former, in accord with the terms of the *Pacte de Famille*, was giving encouragement to Spain.¹⁷ Vergennes protested his desire to make even stronger the union of the two crowns,¹⁸ and the Spanish minister, Grimaldi, declared in warm terms his gratitude

appear in the records of the foreign office. Vergennes had, by this time, become master of the ministry. Turgot did not long hold the favor of the king, and with his retirement Vergennes was the only man of first rate ability in the cabinet. And Vergennes, when he had once determined on a policy, was of a character to pursue it to the end.

¹⁷See page 19, note 33. Spain counted on French assistance in case of war, and the British sent a fleet to Buenos Ayres on behalf of Portugal. Doniol, *Transcripts, Nou. Acq. Francs*, 6482, 39, 41. England offered to mediate but Spain refused unless France should also be a mediator. Ossun to Vergennes, December 5, 1774. (*Ibid.*, 49.)

¹⁸"... je vous prie de ma coopération et de mon empressement pour le maintien de l'union si desirable entre les deux monarques. Si M. le Mis de Grimaldi se rapelle l'époque a laquelle nous residions ensemble auprès du feu roy d'Angleterre peutetre se souviendra t'il que mon attachement a l'union ne date pas du Pacte de Famille qui nous en fait desormais une obligation." Vergennes to Ossun, July 22, 1774. (Doniol, *Transcripts, Nou. Acq. Francs.*, 6482, 6, 19.)

and affection for France.¹⁹ In the communications between the two countries before the middle of 1775, there was much discussion of a war with Great Britain, but there was no suggestion of using the rebellious colonies against the mother country. Vergennes had not fully decided on a course of action regarding America, and the Spanish ministers had no sympathy with rebels. Each nation expressed the greatest sympathy for the other; but the ends that each had in view were entirely different. Vergennes was getting ready to strike hard at Great Britain, while Charles III was seeking anxiously for peace.²⁰ Remembrance of the humiliating treaty of 1763 stirred the French minister to thoughts of vengeance; it merely frightened the old king at Madrid.

Events in America soon forced the hand of Vergennes. The spread of the revolt made necessary the transport of powerful fleets and large bodies of troops across the Atlantic, and Spanish fears of British aggression changed to certainty.²¹ Grimaldi hastened to assure the British ministry of the peaceful intentions of his court, and demanded guarantees that the troops then in America should not be

¹⁹"Il [Grimaldi] . . . m'a chargé de nous assurés de sa gratitude et de la constance des sentiments de consideration et d'amitié . . ." Ossun to Vergennes, December 11, 1774. (Doniol, *Transcripts, Nou. Acq. Francs.*, 6482, 6, 8.)

²⁰Ossun, the French minister to Madrid, frequently enlarged on the anxiety of Charles for peace. See his letter to Vergennes, December 11, 1775. (*Esp.*, 578, no. 70.) Doniol explains the case exactly: *Histoire*, I, 293. See p. 8, note 4.

²¹"Le voisinage quil y a entre les Colonies Angloises de l'Amerique et les possessions l'Espagnoles dans cette parte du Monde ne permit pas de voir sans inquietude tant de forces de Mer et de Terre qui s'y rassemblent, . . . malgre cela il est notoire que l'Espagne n'a pas fait passer dans cette partie le plus petit transport de Troupes et des Vaisseux . . ." Spain further demanded assurances that "les dits armemens de l'Angleterre ne subsisteront en Amerique qu'aussi longtemps que l'esprit de revolte des Colonies . . . et retourneront en droiture en Espagne aussitôt que cet motif aura cessé." Copy in *Esp.*, 575, no. 231. (Aranjuez, April 25, 1775.)

used against the possessions of Spain.²² The answer to this demand was not satisfactory. Great Britain gave assurances that her intentions were peaceful, but at the same time larger armaments were sent to America, the defences of Gibraltar were increased, and a British fleet was sent to watch the navy of Spain.²³ To add to the terror of the Spanish court, credit was given to the rumor that twenty thousand Russian troops and a large German army were on their way to America.²⁴

Fear drove Grimaldi to seek counsel once more from Vergennes. The latter had shown his disapproval of demanding guarantees from Great Britain and he maintained that if France and Spain accepted her assurances they would be bound to remain defenceless, trusting only to the good faith of a treacherous enemy.²⁵ He denounced the ambitions of the British ministry, which, he declared, had in view a project to end the rebellion by uniting all parties in an attack on the American possessions of the Bourbons.²⁶ To Charles III he directed a letter particularly designed to arouse Spanish fears. He pointed out British interests

²²"Vous vous rapellerez aussi les assurances reiteres que je vous ai donnees de l'idée avantageuse et de la parfait confiance que le Roi a dune les vues pacifiques du Gouvernement Anglois. Jajouterais que Sa Mte est toujours dans la meme persuasion." *Esp.*, 575, no. 231.

²³"M. d'Aranda est allarmé des forces de terre qui les Anglois y font passer." Ossun to Vergennes. (*Esp.*, 576, no. 155; see also Doniol, *Transcripts, Nou. Acq. Francs.*, 6482, 83.)

²⁴Doniol, *Transcripts, Nou. Acq. Francs.*, 6482, 130, 136, 163.

²⁵"... si nous acceptons une declaration rassurante de l'Ange nous nous engageons en quelque maniere a rester tranquilles sur la foi de ses assurances, et il faudra ou renoncer aux precautions qui la prudence conseille pour pourvoir nos possessions d'outre mer de tout ce qui peut necessaire a leur conservation ou s'exposer a des reclamations sans fin toutes les fois que nous ferons la moindre disposition pour leur procurer une surete moins preciaire que celle qui peut dependre de la bonne foi des Anglois." Vergennes to Aranda, May 9, 1775. (*Esp.*, 576, no. 20.)

²⁶"... nous etions informés dupuis asses longtems M. qui cetoit une opinion asses accreditee dans l'opposition et que cherchoit a rendre populaire que le moyen de faire cesser la guerre de l'Amerique seroit de la declarer aux deux courrones." Vergennes to Ossun, August 7, 1775. (*Esp.*, 575, no. 15.)

in Porto Rico, San Domingo, and in the control of the Isles of the Winds and the Gulf of Mexico, and argued the certainty of an attack upon some of them by the immense British forces then in America.²⁷

The arguments of Vergennes were not without avail, altho the Spanish king was still anxious for peace. Grimaldi was at last convinced that Great Britain would use her immense forces in America in an attack upon the Spanish possessions.²⁸ Preparations were made to strengthen the chief ports on the Caribbean Sea and the Gulf of Mexico, and the armaments of Spain were greatly increased.²⁹

While preparing for hostilities Grimaldi and his master still hoped for peace.³⁰ They knew that Spain was not ready for war, and had no intention of doing more than provide for the defense of her possessions. It was recognized at both the Bourbon courts that Spain had more to lose in a war with Great Britain than had France.³¹ Spanish colonies were widely scattered and

²⁷Vergennes to Charles III, August 7, 1775. (*Esp.*, 577, no. 15. Doniol, *Histoire*, I, 125.)

²⁸Ossun informed Vergennes that the Spanish feared English aggression, whether the English conquered the Americans or failed. In the first case, they could readily use their large army against the possessions of the two crowns; in the second, they would doubtless use it to make up for their losses by conquering new colonies. October 30, 1775. (*Esp.*, 578, no. 59.) Also November 13, 1775. (*Ibid.*, no. 62.)

²⁹The king of Spain informed Ossun that he would send two battalions to Havana and two to Porto Rico to reinforce the garrisons there. Ossun to Vergennes, November 13, 1775. (*Esp.*, 578, no. 62, p. 179.) Grimaldi wrote to Aranda that Spain would continue her preparations with much "chaleur." February 26, 1775. (*Ibid.*, no. 73.) See also Doniol, *Histoire*, I, 161.

³⁰Charles said he would maintain peace even at the expense of some sacrifice. Ossun to Vergennes, December 11, 1775. (*Esp.*, 578, no. 70, fol. 395.)

³¹Ossun to Vergennes, December 28, 1775. He gives an account of an interview with the Spanish court in which it was clearly brought out that while France had only a few colonies Spain had a rich empire which was almost defenseless. (*Ibid.*, 578, no. 74, fol. 461.) Grimaldi to Vergennes, November 5, 1775. (*Ibid.*, 582, no. 69, fol. 161.)

defenseless, while the few still left to France were strongly fortified. In the schemes of Vergennes, especially in the establishment of an independent state in America, the court of Charles III could have no interest. While the Spanish government recognized that an independent nation in the New World would be a menace to the British possessions, it did not overlook the danger to its own colonies. It was clear that the power that would be able to check the British in Canada would be formidable to the Spaniards in Louisiana. The interests of Spain could not be realized merely by humiliating Great Britain. She was anxious to recover her ancient possessions, particularly Gibraltar, Minorca, and Jamaica,³² but could see only danger from an independent nation in the New World.

It became then the task of Vergennes to win the Spanish ministers to his policy. Grimaldi did not have the quality of mind to follow an independent course, and the opposition of the French party at the Spanish court led him to doubt the wisdom of his own reasoning. As a result his actions were timid and vacillating, and the opposition was encouraged to continue its endeavors to bring about war with the British Empire. Again and again Ossun pointed to the vast armaments which Great Britain was sending to America, and as often declared that they would ultimately be turned against the colonies of Spain. He urged that the time had come to weaken England and deprive her of a part of the vast empire through which she was seeking to control the world. The opportunity was at hand, he urged, to ruin her commerce in the Mediterranean, the Levant, and in Africa, and to build up the trade of France and Spain on its ruins.³³ Vergennes found an enthusiastic advocate in Aranda, the Spanish minister to Versailles, who, to his own court, pictured the English as the perpetual enemies of Spain, hostile because of rivalry

³²Grimaldi to Ossun, October 8, 1776. (*Esp.*, 582, no. 21.)

³³Memorial handed by Ossun to Grimaldi, July 8, 1776. (*Ibid.*, 581, no. 15, fol. 42.)

in interests, and the difference in the character of their population.³⁴ In the past, he urged, England had overcome her enemies by a sudden and unexpected attack, and there was good reason to think that she was preparing to do the same again. He was sure that the close of the American war meant an attempt to secure for Great Britain some compensation for her losses by an attack on the possessions of France and Spain. Aranda showed himself particularly anxious for the provinces of San Domingo and Louisiana, which, he asserted, were entirely unprotected.³⁵

The arguments of Vergennes and the pleadings of Aranda were not without effect on the wavering mind of Grimaldi, and he began to carry on more vigorously the work of arming his country.³⁶ Plans were formed once more for an attack on Gibraltar, Jamaica, and other colonies of the British Empire.³⁷ Grimaldi, however, did not neglect preparations for defending the Spanish dominions. He was particularly worried about San Domingo, which, altho poorly fortified, would be of immense advantage to England, and he urgently besought Vergennes to send troops for its protection.³⁸

³⁴Translation in *Esp.*, 579, no. 81.

³⁵"M. d'Aranda est allarmé des forces immenses de terre que les Anglois y font passer: considere qu'il est a craindre quelque soit l'évenement de la guerre des colonies, que les Anglois ne s'emparent de quelques possessions considerables, espagnoles ou francoises. . . . M. d'Aranda examine ensuite quelle seroit la conquête la plus aisee et la plus facile que les Anglois pourroient entreprendre il se fixe a la Louisiane et a l'isle St. Domingue, la premiere comme les mettant a portee de s'emparer dans la suite du Mexique; la seconde pouvant leur procurer de grande richesses et augmenter considerablement l'entendue de leur commerce. Cet ambassadeur regarde cette conquête comme infallible si les Anglois l'entreprennent, il suppose que l'Espagne a suffisamment pourvu a la conservation de la Havane de Porto Rico, et des autres Colonies de consequence et il conseille très fort de pourvoir sans delai, a la defense de la Louisiane et de St. Dominique." Ossun to Vergennes, April 25, 1776. (*Ibid.*, 580, no. 57, new 31.)

³⁶Grimaldi to Aranda, February 26, 1776. (*Ibid.*, 579, no. 73.) Ossun to Vergennes, August 19, 1776. (*Ibid.*)

³⁷*Archives de la Marine*, B4, 30-41.

³⁸Ossun to Vergennes, July 1, 1776. (*Esp.*, 581, no. 57.)

The belief that the close of hostilities between England and her colonies meant an attack on the American possessions of Spain gave the United States a new importance in the eyes of that power. Her ministry saw a crisis approaching which, if properly utilized, might mean a vast increase in the Spanish empire. It recommended measures for a vigorous campaign formidable enough to overwhelm the enfeebled state of Britain.³⁹ It promised a close alliance with France but, at the same time, solicitously recalled that Spain must suffer the heavier losses in case their plans should miscarry.⁴⁰ Grimaldi was convinced that the war in America would soon end and then would come the long dreaded attack. To withstand this onslaught the Bourbon powers must be ready to strike at the critical moment.

The activities of Spain aroused British suspicions and Lord Grantham, the British minister at Madrid, demanded explanations. He assured Grimaldi of the peaceful intentions of his court, and declared that the British armaments were intended only to suppress the revolt in America. He complained that the preparations of Spain and France could be directed only against Great Britain.⁴¹

Grimaldi was not fully satisfied with Grantham's assurances of good will. He replied that the preparations of the Bourbon powers were made only in self defense and that they desired peace above all things, but he also declared that the armaments of Great Britain were too dangerous to pass by unnoticed.⁴² Spain therefore did not

³⁹"Que si l'Angleterre est maintenant foible, elle le sera d'avantage dans deux ou trois mois par les pertes, qui lui aura cause la guerre civile". Grimaldi to Ossun, October 8, 1776. (*Esp.*, 582, no. 21.)

⁴⁰"Enfin que dans cette guerre l'Espagne risque infiniment plus que la France en egard a ses vastes et riches possessions." Grimaldi to Ossun, October 8, 1776. (*Ibid.*)

⁴¹Ossun to Vergennes, November 21, 1776. (*Ibid.*, 582, no. 132, new 106.)

⁴²Grimaldi to Aranda, November 29, 1776. (Translation. *Ibid.*, 582, no. 137.)

cease her efforts to strengthen her military position, and it looked as if the Bourbon powers were rapidly drifting into war.⁴³

The vacillating Grimaldi was not yet ready to proceed to extremities, but wished to postpone war as long as possible.⁴⁴ An attack by the Bourbon powers upon Great Britain, he urged, would produce a reconciliation between the combatants in America, and a combined attack upon the Spanish colonies.⁴⁵ On the other hand, he argued, a recognition of the United States would imperil Spanish interests by encouraging revolt among her American possessions. He further suggested that the two powers should plan to begin war early in 1778, but that, in the meanwhile, they should try to reconcile England and her colonies.⁴⁶

The objects of French and Spanish diplomacy were fundamentally different. Vergennes wished to enfeeble Great Britain in order to readjust the balance of power in favor of France. Spain, on the other hand, accepted with resignation her loss of influence in Europe, and her statesmen were looking only to an extension of colonial power. Grimaldi declared that if his country should enter into war with Great Britain, her plans would in no wise concern themselves with the American conflict. The objects of Spanish policy would be, first of all, to conquer Portugal, or at least a part of her dependencies, to destroy British commerce in the Mediterranean, and to reconquer Gibraltar and some of the other lost colonies of the ancient Spanish empire.⁴⁷ While Vergennes wished to act in conjunction with the Americans, Grimaldi insisted upon an independent course of conquest. Vergennes wished to raise

⁴³Grimaldi urged France to get ready for war. Ossun to Vergennes, November 26, 1776. (*Esp.*, 582, no. 193, new 117.)

⁴⁴Grimaldi suggested that if France would disarm England would doubtless do likewise. Ossun to Vergennes, November 26, 1776. (*Ibid.*)

⁴⁵Grimaldi to Aranda, February 4, 1777. (*Ibid.*, 583, no. 70.)

⁴⁶*Memoir of the Court of Spain*, July, 1776. (*Ibid.*, 585, no. 100.)

⁴⁷*Memoir of Court of Spain* sent July 26, 1776. (*Ibid.*, 585, no. 100, fol. 185.) Grimaldi to Ossun, October 8, 1776. (*Ibid.*, 582, no. 21.)

up a nation in the New World as a friend to France and a barrier to British aggression; Grimaldi feared an independent state as a constant menace to the possessions of Spain. With these conflicting aims there could be no sympathy of action between the two crowns.

The conflicting ideas of France and Spain became first apparent on the question of giving aid to the revolting colonies. Both had furnished money and supplies for prolonging the war; but while the aid of France had been, under the direction of Beaumarchais, steady and zealous, the grants of Spain had been given grudgingly and only at the urgent solicitations of her ally. Early in 1776 the British navy succeeded in blockading many American ports and Vergennes decided to seek new means of aiding the colonies. He proposed that Louisiana should be used as a base from which supplies could be furnished to the insurgents. Spain had good reason, he urged, to fortify and provision this province, and, while doing this, it would be easy to send provisions into the English provinces.⁴⁸ Grimaldi declined to fortify the mouth of the Mississippi, but courteously offered Vergennes the privilege of using New

⁴⁸"Les avenues [to America] sont bien gardées quil sera desormais très difficile de percer par mer dans ce continent la route de la Louisiane est presque la seule quoique bien plus longue, mais nous n'en avons plus la possession et vous connoisses la repugnance des Espagnoles pour donner acces aux Etrangers.... Les Anglois disent a la force de l'Europe quilz manquent de vetements, d'armes et des munitions de guerre; c'est indiquer ce quil seroit expedient de leurs fournir et ou pourroit ou mieux leurs faire trouver leurs besoins qu'a Louisiane. L'Espagne a des grands motifs pour fortifier et pour aprovisionner cette colonie: c'est lavant [MS. illegible] du nouveau Mexique: que des choses sous ce pretexte ne pourrait on pas y porter, dont a titre de commerce les insurgens pourroient traiter. A seroit leur affaire ensuite de les faire arriver au lieu de la consummation. Les derrieres sont libre. . . . les insurgens etant sans numeraire et leur denrees netant pas propus a ce commerce il faudroit leur livrer a credit les efforts quon leur fourniroit sauf a les payer ensuite par envoi de leur denrees dans les ports d'Espagne; d'ailleurs quelques millieurs de barrils de poudre ne sont pas un objet [MS illegible] pour une aussi grande puissance que l'Esp." Vergennes to Ossun, March 15, 1776. (*Esp.*, 579, no. 116, new no. 11.)

Orleans as a depot from which the French could aid the colonists. New Orleans was of no use, he urged, for the defence of the Gulf of Mexico, and no plausible pretext could be offered for fortifying it. No arms could be furnished, he continued, for all those made in Spain bore the royal insignia; but, if France cared to despatch an expedition, Spain would pay a part of its expenses.⁴⁹

Vergennes declined the use of New Orleans on the conditions offered by Grimaldi. He argued that while Spain could increase her forces there on account of the proximity of the revolt,⁵⁰ French troops in the Mississippi Valley

⁴⁹"Ce ministre [Grimaldi] est convenu quil seroit desormais tres difficile de percer par mer dans le continent anglois de l'Amerique septentrionale et que la route de la Louisiane, quoique bien plus longue, étoit presque la seule par laquelle on put être informé de ce qui se passeroit dans le continent anglois; il a ajouté la permission de se rendre a la Louisiane aux sujets que la France jugeroit a propos d'y envoyer pour remplir d'objet desire. Ossun to Vergennes, March 28, 1776. (*Esp.*, 579, no. 145, fol. 24.) "M. . . . Grimaldi m'a dit que le Roi son Maître n'y trouvoit, d'autre difficulté que dansles moyens de l'executer de maniere a pouvoir le desavouer et avec le plus grand secret possible, que l'Espagne n'étoit pas dans l'usage d'envoyer souvent des batiments a la Louisiane: que cette Colonie n'étant pas susceptible d'etre fortifiée ni d'etre regardée comme un poste interessant la conservation du Mexique ne seroit pas un pretexte plausible; que toutes les armes que se font en Espagne protent la marque des fabriques Royales: quil faudroit donc que les effets dont il s'agit pussent partir de France, destinees en apparence pour un de nos Colonies mais reellement pour la Louisiane. Ossun to Vergennes, April 1, 1776. (*Ibid.*, 580, no. 2, new 25.)

⁵⁰Vergennes to Ossun, April 22, 1776. (*Ibid.*, 580, no. 46, new 7.) Nous ne pensons pas differement de M. Grimaldi sur la commodité dont peutêtre la Louisiane pour y etablir un entrepost ou les insurgens trouveroent a s'aprovisionner des gendres qui peuvent leur manquer: mais sil Espagne qui possede ce pays manque de motifs pour y envoyer l'aliment de ce commerce, quil pretexte pourrions nous employes pour couvrir l'envoy que nous pourrions y faire de nos batimens, prevenir quils ne fussent suspectes visites, et arrites?" *Ibid.*

would at once arouse English suspicion.⁵¹ Grimaldi, however, refused to change his attitude and the matter was allowed to drop.⁵²

At the close of 1776 new conditions arose to pull the policies of the Bourbon powers still further apart. In December, Benjamin Franklin arrived in Paris as the envoy of Congress, and soon after the incompetent and vacillating Grimaldi was succeeded by the able and aggressive Count de Florida Blanca. Franklin at once made a most favorable impression on Paris and the French court. The moderation of the American demands delighted Vergennes and he was convinced that the time had come for France to recognize the new republic and take steps for the humiliation of Great Britain. He assumed that Spain would still act in harmony with his court, and arranged for a meeting between Franklin and Aranda.

Aranda had already given himself to the cause of war. He was the leader of the French party at the Spanish court and devoted to the Family Compact. He had been a soldier of Frederick the Great, an enemy of the clerical party, and was a student and admirer of eighteenth century French

⁵¹"... J'attendrai M. la conversation que M. le M. de Grimaldi vous avoit promis sur l'usage quom poruoit faire de la Louisiane pour y faire trouver aux Americains les munitions dont ils manquent. Nous ne pouvons pas nous servir de cette voye; des permissions particulieres accordees a quelques de nos armateurs decleroient le but de ces envoys et soumet troient nos batimens a etre detournes de leur route par les Anglois. Les Espagnols ont au contraire un motif aparent pour couvrir les envoys qui peuvent se faire dans cette partie. Le feu de la revolte qui saproche de cette frontiere est une raison legitime pour y porter avec abondance tous les moyens qui peuvent la faire respecter." Vergennes to Ossun, April 12, 1776. (*Esp.*, 580, no. 29, new 16.)

⁵²M. Grimaldi . . . a trouvé forte justes les considerations qui empêchent la France d'envoyer a la Louisiane des emissaires pour eclairer ce qui se passe dans les Colonies Britainniques et d'engager des negocians et des navigateurs francais a fournir aux besoins des Provinces Angloises revoltes. Ce Ministre a senti que les memes motifs qui suspenoient la prevoyance du Gouvernement Espagnol devoient l'interdire au Ministere Francois; aussi c'est une idee dont il ne sera plus question." Ossun to Vergennes, May 6, 1776. (*Ibid.*, 580, no. 76, new 35.)

philosophy. He had driven the Jesuits from Spain but had been unable to maintain his position at the court and had retired as ambassador to Versailles.⁵³ Here he bent his efforts to bringing about a war with Great Britain. He pictured to his court the loss of Louisiana and the West Indies unless a strong effort were made to save them,⁵⁴ and had already convinced Grimaldi that another general war was inevitable.⁵⁵

The hopes of Franklin to bring France and Spain into alliance with the United States seemed near realization,⁵⁶ when all his plans were broken up by the overthrow of Grimaldi and his party at the court of Charles III. Grimaldi was sent to Italy, and, altho Aranda was allowed to retain his post, he lost all influence and was no longer entrusted with important negotiations between the two courts. The tone of Spanish diplomacy changed in a night and Vergennes found that the faith of kingdoms was no more to be relied upon than the promises of republics.

⁵³Bancroft, *United States*, V, 128.

⁵⁴See p. 41, note 35.

⁵⁵Grimaldi informed Aranda that he believed there were many advantages in beginning the war with Great Britain at once. He declared his belief that this power would begin war without notice and use her forces in America in an attack on some of the Spanish colonies. October 8, 1776. (*Esp.*, 582, no. 21.) Spain sent a fleet to cruise in the waters of the southern West Indies while the French maintained vessels off the southern coast of North America to watch the British ships which might attempt to enter the Gulf of Mexico. *Archives de la Marine*, B4, 128, p. 194.

⁵⁶Grimaldi wrote to Aranda, February 4, 1777, regarding an alliance with the Americans which he regarded as probable altho he felt no enthusiasm for it and was fearful of treachery. (*Esp.*, 583, no. 70. See also *Memoir of Spain*, January 3, 1777.) In this Grimaldi set forth the danger of an attack from England and suggested that Spain should imitate the "celerité des Anglois". As the war was "indispensable" Spain would not be the aggressor. (*Ibid.*, 583, no. 42.) On January 27, Ossun wrote Vergennes as if an alliance with the Americans were concluded. (*Ibid.*, no. 11, fol. 8.) During the next month Grimaldi was busied with projects of war and schemes for aiding the colonies. Grimaldi to Aranda, February 4, 1777. (*Ibid.*, 583, no. 70.) Ossun to Vergennes, February 29, 1777. (*Ibid.*, 579., no. 77.)

The successor of Grimaldi, Don Jose Monino, Count de Florida Blanca, was an able and ambitious man and subservient to the wishes of the king and to the interests of Spain. Grimaldi had negotiated the Family Compact of 1761 and was willing to stand by it, but Florida Blanca cared nothing for the alliance. The rule of the foreigner in Spain was at an end, and a Spanish ministry began the formation of a Spanish policy.⁵⁷ The new minister was intensely jealous of French influence, and proceeded to lay out a policy calculated to make Spain independent and France a suppliant. No longer did the Spanish ministry look to Vergennes for guidance, but her aid was henceforth to command its price and a price increasingly exorbitant. An intense royalist, Florida Blanca hated the new republic across the Atlantic,⁵⁸ and refused to accept Vergennes's plan for a triple alliance. A strong imperialist, he hoped to recover the ancient dominions of his king. His imperialist and royalist principles combined made him oppose the recognition of the United States, and led him to seek in every way to restrict the boundaries of the new republic. Such was his dislike of the United States that he refused to receive its representatives as long as possible; and, when he did receive them, it was with coldness and reserve. Florida Blanca was a most skilful diplomat. In every point he succeeded in overreaching Vergennes, and throughout the war and during the negotiations for peace he was the most resourceful and determined enemy of the American cause. No longer was Vergennes able to discuss freely and with assurance the future of the new republic; he must consider always the opposition of Florida Blanca.

With Florida Blanca was associated Galvez, minister for the Indies, who included among his duties the management of colonial affairs. Like his chief he was sincere and single-minded in his patriotism; but he did not show the

⁵⁷Bancroft's excellent characterization of Florida Blanca is borne out by the documents. *United States*, V, 137 et seq.

⁵⁸Montmorin to Vergennes, December 23, 1777. (*Esp.*, 587, no. 125.)

same subserviency to the wishes of Charles III. He often opposed the measures of the prime minister regarding the policy of Spain, and showed an active sympathy for the American insurgents. In his hatred for the enemies of his country he sometimes showed himself as radical as Aranda.⁵⁹ Such aid as the Americans received from Spain was largely due to his favor.

The ideas of Florida Blanca differed from those of Vergennes in every important detail. The Spanish minister had determined upon a policy of peace, and as the price of peace he expected to gain large accessions of territory in the New World. Furthermore, he showed no inclination to give recognition to the United States in their struggle for freedom. He felt no love for the British Empire, but he dreaded more the growing power of the young nation in America. He regarded it as already a rival to Spain for the possession of the Floridas, and a dangerous contender for the vast territories west of the Alleghanies.

Florida Blanca had a definite policy in view; he planned to hold the balance of power between Great Britain and her enemies, and to take whatever position would offer the best opportunity for an increase of Spanish influence. He believed he could attain his ends without involving Spain in war; but he realized that, if his country should have any weight in the final settlement, it must be prepared for any emergency. He did not know, too, at what moment his schemes might fail, and a British fleet fall upon the exposed colonies of the empire and reduce them to subjection. From the nature of his policy, the course of Florida Blanca could not fail to impress outsiders as timid and vacillating, but the inconsistencies of his actions gave his policy its only chance of success.

"We do not need to undertake war in order to augment our power, for whatever the outcome of the struggle between England and her colonies, our power will be in-

⁵⁹Ossun to Vergennes, December 9, 1776. (*Esp.*, 582, no. 163, new 112; Bancroft, *United States*, V, 136.)

creased,"⁶⁰ wrote Florida Blanca soon after assuming direction of affairs. To Vergennes he explained himself less clearly. "The two monarchs," he urged, "will not swerve from their principle of moderation, if they wish to profit, by some happy opportunity to recover, by way of negotiation, some of the territories which legitimately belong to them, or which have been usurped from them by violence."⁶¹

Against these ideas Vergennes protested vigorously. There were no territories either in Europe or America, he declared, tempting enough to compensate for the hazards, "les calamités, et l'épuisement résultant d'une guerre." France had all the colonies she needed, for the interest of her industry, he urged, and more extensive possessions would be but a burden. Even the loss of Canada ought to be regretted less, he declared, since its abandonment has been the signal for the revolt of the English provinces. He admitted the interest of France in the Newfoundland fisheries, but he wrote of the matter with no enthusiasm.⁶²

These radically different views of the two ministers could admit of no compromise. Florida Blanca cared nothing for the Newfoundland fisheries or for the commerce of the United States. His policy was one of territorial aggression, while Vergennes opposed all conquests. Against the French minister's idea of war to enfeeble the British Empire, Florida Blanca set up the plan of Spanish aggrandizement by peaceful negotiations.

In spite of his pacific intentions, however, Florida Blanca continued his preparations for war. He knew that the game of diplomacy could be successful only when supported by arms; and he saw a real danger to the Spanish

⁶⁰Florida Blanca to Aranda, April 7, 1777. (Translation in *Esp.*, 584, no. 14, new 31.)

⁶¹Quoted by Vergennes in note to Aranda, April 26, 1777. (*Ibid.*, 584, no. 40.)

⁶²See Vergennes to Aranda, April 26, 1777. "Si la perte du Canada", he continued, "lui a été sensible, elle doit la moins regretter depuis que l'abandon qu'elle a été obligée d'en faire est devenu le signal de révolte des provinces angloises." (*Esp.*, 584, no. 40. See p. 34, note 15.)

empire in the cupidity of Great Britain. He felt that Spain should prepare to defend herself and particularly her American colonies. For this purpose he was glad to continue to act in cooperation with France. The naval heads of the two nations had already formed plans for patrolling the west Atlantic, and commanders of ships were ordered to watch carefully the movements of English vessels, especially those trying to enter the Gulf of Mexico or the waters of the West Indies. The instructions further ordered that the commanders of both nations were to aid each other, and to guard equally the interests of the two crowns.⁶³ Besides these arrangements Florida Blanca provided for the military defense of the Spanish colonies. An army corps was sent to San Domingo, and additional troops were despatched to Havana, Vera Cruz, and Porto Rico.⁶⁴ Special attention was given to Louisiana on account of its proximity to the British possessions. Spanish fears were increased by the great number of English Loyalists who were fleeing from the Atlantic provinces and settling along the east bank of the Mississippi. The Spanish officials at New Orleans had already recommended that the colony be placed in a state of defense against the English, who could easily come from Pensacola or Mobile, or even from Canada, by way of the Mississippi and Ohio.⁶⁵

While preparing to defend Spanish colonists against Great Britain, Florida Blanca could not ignore the new nation across the ocean. Its representatives were already in Paris and one of them was seeking admission to the Spanish court.⁶⁶ Frenchmen were enthusiastic for the

⁶³The Spanish were to guard the Gulf of Mexico and the approaches to New Orleans, while the French were to watch the West Indies. *Project d'Instructions correspondantes a cette de la cour d'Espagne . . .* (*Archives de la Marine*, B4, 128, p. 194.) Florida Blanca frequently urged the necessity of getting ready for any emergency. Ossun to Vergennes, February, 1777. (*Esp.*, 583, no. 118, new 21; *ibid.*, no 127, new 24.)

⁶⁴Ossun to Vergennes, February 27, 1777. (*Ibid.*, 583, no. 127, new 24.)

⁶⁵Fortier, *Louisiana*, II, 25-33.

⁶⁶Franklin and Deane were in Paris, and Arthur Lee started in the spring of 1777 for Madrid.

independence of the new republic. Aranda at Paris and the friends of France in Spain kept urging Florida Blanca to join with the court of Versailles for another struggle against the common enemy.⁶⁷

Altho Florida Blanca had no intention of recognizing the independence of the United States, he believed it for the best interests of Spain that the war should continue. Great Britain already suspected the Spaniards of aiding the insurgents and a sudden collapse of the revolt would mean the end of Florida Blanca's hopes to regain some of the former possessions of Spain, and might mean the loss of others. To prevent such a danger he kept up the negotiations with Vergennes and furnished aid for the Americans.⁶⁸

Early in 1777, Arthur Lee had set out from Paris to Madrid to secure Spanish assistance for the American cause. He was allowed to proceed no further than Burgos, where Grimaldi met him. We know little of the interview. Grimaldi apparently did not treat the mission seriously and Lee's accounts are colored by his sense of personal importance.⁶⁹ It is clear, however, that Lee was willing

⁶⁷Ossun repeatedly wrote of the earnest insinuations of Aranda to treat with America and go to war with Portugal and Great Britain. Ossun to Vergennes, January 23, 1777. (*Esp.*, 583, no. 39, new 7.)

⁶⁸Ossun informed Vergennes that Florida Blanca was in accord with France in regard to the war in America, that both powers desired its continuance. March 3, 1777. (*Esp.*, 583, no. 136, new 28.) Florida Blanca wrote the same to Aranda, and declared that it was important to sustain the American colonies, for as long as the war continued both sides would be weakened. March 5, 1777. (*Ibid.*, 140, new 1.) "M. de floride blanca m'a assuré Monsieur, qu'on avoit déjà fait des remis d'argent a M. Lee, et qu'il retournoit en France satisfait des secours pecuniares qui luy avoient été promis." Ossun to Vergennes, March 24, 1777. (*Ibid.*, 583, no. 184, new 39.)

⁶⁹On March 3, Ossun wrote that Grimaldi had neglected for a long time to give the Spanish court an account of his interview with Lee. (*Ibid.*, 583, no. 136, new 28; Bancroft, *United States*, V, 137.) Lee asserted that he received encouragement from Spain and a promise that war should be begun within a year. (Wharton, *Dip. Cor.*, II, 282.) There is no evidence to support Lee's assertions.

to offer, in return for an alliance, the assistance of the United States in the conquest of the Floridas.⁷⁰ While Spain was anxious for those provinces she would not enter into negotiations with the United States until they had given stronger evidence that they were able to maintain their independence. Charles III declared that the offers of Lee were premature.⁷¹ Spain was willing to aid the Americans secretly but would enter into no negotiations with them which might mean a recognition of independence.

In spite of Florida Blanca's resolutions for peace, preparations for war were rapidly increased.⁷² Louisiana would doubtless be the first object of attack in case of war, and would afford an excellent depot of supply for the insurgents as long as Spain cared to aid them. Galvez, the president of the Council of the Indies, sent over as governor of Louisiana, his nephew, Bernardo de Galvez, an energetic and ambitious man, full of sympathy for American independence. The younger Galvez entered with vigor on his administration and prepared to begin the struggle along the Mississippi. For several years the British had controlled the trade of the river, but their monopoly was now at an end. The Spanish governor at

⁷⁰Wharton, *Dip. Cor.*, II, 290. "J'ai l'honneur de vous informer qu'une des propositions que le M. Lee a faites a l'Espagne pour l'exciter a venir au secours de Colonies Angloises, a été qu'elles s'engageroient a prendre Pensacola conquête facile selon M. Lee et a remettre immédiatement cette place au pouvoir de Sa Majeste Catholique. Je sais que cette Monarque a repondu qu'il verroit avec beaucoup de plaisir les Insurgens faire cette acquisition mais qu'il n'en accepteroit la cession que lorsque leur independence seroit assurée. C'est en travaillant avec M. de Galves que le Roy Catholique a dicté cette reponse, mais j'ai lieu a croire que l'avis de M. le Comte de floride blanca seroit que l'Espagne acceptat l'offre des Colonies a titre de depot en attendant la decesion de la guerre qu'elles soutient. Je doute que son sentiment soit adopte." Ossun to Vergennes, March 24, 1777. (*Esp.*, 583, no. 184, new 39.)

⁷¹"Le Roi d'Espagne a seulement daigne me dire . . . qu'il avoit fait connoître a ce Deputé [Lee] qu'il les [propositions] regarderoit comme prematurees." Ossun to Vergennes. (*Ibid.*)

⁷²Vergennes to Ossun, May 2, 1777. (*Ibid.*, 584, no. 48, new 30.)

once seized all the British vessels within reach and ordered the confiscation of all that should enter the port. In one day, soon after his arrival, eleven English vessels, laden with rich cargoes, were captured and condemned by his orders.⁷³

The belligerent attitude of the Bourbon powers alarmed the British court. The British ambassadors, Stormount at Paris and Grantham at Madrid, were instructed to demand explanations regarding the immense military and naval demonstrations in America. Both declared that the intentions of the British court were peaceful, and they offered a British guarantee of the Spanish possessions in America.⁷⁴

To the British representations, both Vergennes and Florida Blanca gave the same answer. They declared that it was necessary to guard Spanish interests in America, and Florida Blanca added, by way of explanation, that a strong force was needed to hold in subjection the Spanish colonies which were being seduced by the example of the British provinces.

The protests of Great Britain was a step towards the success of Florida Blanca's policy. Her alarm convinced him that she was ready to concede much for the sake of peace. France was seeking Spain's alliance and the Americans were bidding high for her assistance. With French, Britons, and Americans seeking favors from Spain, Florida Blanca felt strong enough to assume an independent attitude. He informed Ossun that Spain had much to lose and nothing to gain from war with Great Britain,⁷⁵ but that the two crowns could settle the troubles in America and receive valuable concessions as the price of neutrality.⁷⁶ Charles III again and again declared his wish

⁷³Fortier, *Louisiana*, II, 56-57.

⁷⁴Vergennes to Ossun, May 2, 1777. (*Esp.*, 584, no. 48, new 30.) Ossun to Vergennes, May 19, 1777. (*Ibid.*, no. 80, new 60.)

⁷⁵Ossun to Vergennes, May 15, 1777. (*Ibid.*, 584, no. 75, new 58. See also p. 39, note 31.)

⁷⁶Vergennes to Ossun, June 21, 1777. (*Esp.*, 584, no. 140, new 38.)

to end his days in peace, and Spain was committed to a policy of masterly inactivity. Florida Blanca had lost much of his fear of British aggression, but he greatly distrusted France. He wished to recover the old empire and influence of Spain, but he did not believe that Vergennes would aid him in his efforts. Spanish diplomacy was still in the shoals; but its pilot felt that if he would bide his time, the warring nations must allow his country to regain some part of the vast influence she had wielded under Charles I.

The defection of Spain did not cause Vergennes to despair. He still favored sustaining the Americans and still counted on the assistance of Florida Blanca. He made no protest against the action of the Spanish court, but declared that its measures were in full accord with his own policy.⁷⁷ He agreed that the continuance of the war was beneficial to the Bourbon powers, and was glad to get Spanish aid for the Americans. He was anxious, however, about the future policy of Florida Blanca,⁷⁸ but hoped to persuade him to unite with France in recognition of the United States. To this end and doubtless at his instance, Franklin wrote directly to the Spanish ambassador, asking for an alliance, and offering to assist Spain in the conquest of Pensacola, if only the use of its port, together with the free navigation of the Mississippi should be granted to the Americans.⁷⁹

⁷⁷Florida Blanca to Aranda, March 5, 1777. (Translation in *Esp.*, 583, no. 140, fol. 1.) Ossun asserted the same thing to Vergennes. March 3, 1777. (*Ibid.*, no. 136, fol. 28.) "Les principes d'après lesquels la Cour de Madrid a dirigé ses réponses au M. Lee sont entièrement conformés à ceux que nous avons adopté à l'égard des insurgens et que nous continuerons de suivre jusqu'à ce que les circonstances nous paroissent en exiger d'autres." Vergennes to Ossun, March 25, 1777. (*Ibid.*, no. 186, new 23.)

⁷⁸"Je vous prie M.... surtout de nous mander quelle somme d'argent ce Pce s'est déterminé de luy Congress accorder.... Je vous prie M. de nous informer exactement que le Roi Cque fera parvenir" (*Ibid.*)

⁷⁹Franklin to Aranda, April 7, 1777. (Wharton, *Dip. Cor.*, II, 304.)

Vergennes made quick use of Franklin's offer to Spain. He had previously asserted that neither country had use for conquests; but now he began to dangle before the hungry eyes of the Spaniards rich conquests as the reward for their services. He spoke, not only of the Floridas, but even suggested the conquest of the rich sugar islands.⁸⁰ He pointed out again the danger which Spain must encounter if she allowed a settlement of the struggle in which she had no part. Such an outcome, he declared, would endanger the whole colonial empire of the two crowns.⁸¹

Altho Vergennes was willing to concede much to the ambition of Spain, he still asked nothing for France. To Louis XVI he argued that the only interest of the monarchy was the enfeeblement of Great Britain. This could best be accomplished by breaking up the British empire in America. With Canada in the hands of the English, he argued that the United States must necessarily hold close to France for their own safety, and thus French prestige would be increased.⁸²

That part of British America not in revolt, he would leave in possession of its rightful sovereign. He hoped in this way to ensure a constant rivalry between the two Anglo-Saxon powers which would hold the United States in dependence on France. Vergennes would make the United States an independent nation as a barrier to British aggression. It was of no interest to France to create a great and extensive republic, whose boundaries could be extended only by the cost of much blood and money. He would ensure the limits of the United States as he conceived them to be; but to his mind, Canada and the Mississippi Valley, the ancient possessions of France, had never been a part of the English colonies, and he would not

⁸⁰Vergennes to Aranda, April 10, 1777. (*Esp.*, 584, no. 21.)

⁸¹Vergennes to Ossun, April 12, 1777. (*Ibid.*, no. 22, new 26.)

⁸²*Memoire au Roi*, July 23, 1777; marked "approuvé". (*Esp.*, 585, no. 56.)

make an effort to obtain them for the new republic. Here was the bone of contention. Spain wished the east bank of the Mississippi to insure her control of the Gulf of Mexico; the United States claimed it by right of their ancient charters; while Vergennes, anxious to maintain the balance of power in America, preferred that Great Britain should keep it. He wished to establish the United States as a menace to British power; Florida Blanca feared the new nation as a danger to Spanish power. To bring Spain and the United States to the point of view of Vergennes was the problem of French diplomacy and its solution was to give the French minister many thoughtful hours.

CHAPTER III

THE QUESTION OF THE WEST.

In the policy of Vergennes America was but a club for the humiliation of Great Britain. It was his plan to build up a nation in America with sufficient strength to check British aggression, but not powerful enough to be independent of French influence or to threaten the balance of power in the New World.¹ The disintegration of the British Empire in America was rapidly going on, and Vergennes felt that, with Spanish aid, he could control the result. The forces of colonial hatred were at his service; could he also command the strength of Spain's jealousy and ambition?

The ambitions, the hopes, and the plans of the Americans beyond their mere desire for independence were unknown to Vergennes, or at best he discerned them but vaguely. In the development of his policy the French minister showed little interest and less knowledge of the conditions and purposes of the revolting provinces. From the time of Bonvouloir's mission until the surrender of Burgoyne, neither France nor Spain had any representatives in America. Both countries had felt the need of more information; but neither had regarded the matter as important enough to command immediate action.²

¹*Memoire au Roi* (*Esp.*, 585, no. 56.) "Si elle [independence] s'achevé par notre moyen, elle doit en abaissant L'Angleterre relever d'autant la France, et la remettre a son rang." *Reflexions* [unsigned], January 7, 1777. (*E. U.*, II, no. 16, new 28; Doniol, *Histoire*, II, 118.)

²In July, 1777, Vergennes suggested to Spain that each country should have some one in America "wise, sensible, and discreet, who, without character, or ostensible mission" should investigate conditions there. (*Esp.*, 585, no. 45, new 53.) For the duties of this position he thought a merchant best fitted. To Ossun, August 25, 1777. (*Ibid.*, no. 51, new

During the years from 1770 to 1777 France paid little attention to the Mississippi Valley. The only interest she showed in this territory was purely commercial. In the foreign office there are some memorials on the tobacco of Louisiana, and Ossun recommended that it take the place of the Virginia tobacco, which could hardly be obtained.³ There was no suggestion, however, that France should attempt to recover her political power in Louisiana.

To the mind of Vergennes it is probable that the question of who should control the West never occurred until it was forced upon him by the issues of the war.⁴ In

137.) In November, Florida Blanca informed Ossun that he already had an agent in America, a man named "Edouard" who had been in the colonies before on matters of business and was regarded as possessing the prudence and skill necessary for a difficult mission. Ossun to Vergennes, November 8, 1777. (*Ibid.*, 586, no. 139; Doniol, *Histoire*, II, 578.) What became of Edouard we do not know. There is no further mention of him in the documents in the foreign office in Paris, and when Gerard, the French minister, landed in America in 1778, Spain was represented by Miralles. (*E. U.*, IV, no. 23, new 97.) Vergennes still delayed. He gave as his reason the difficulty of finding a suitable agent. In November he declared that he had in mind one who, he thought, would be admirable, and who should go at once by way of San Domingo. (*Esp.*, 587, no. 17; Doniol, *Histoire*, II, 580.) At the same time he asked the Spanish government to transmit to him any information which it might receive. Vergennes finally sent a man named Holker, though it is probable that his original choice was Beaumarchais. (Doniol, *Histoire*, II, 615.) Holker's instructions were given verbally, but there is a minute of them in the French foreign office. November 25, 1777. (*E. U.*, II, no. 144, new 266.) In this document there is every evidence that Vergennes knew nothing of the desires of the Americans. Holker was to learn of the situation of affairs in America and report them at once. He was to represent to the Americans their need for some power to protect them from Great Britain and to suggest that France might aid them.

³*Esp.*, 583, no. 70. Ossun to Vergennes, January 27, 1777. (*Ibid.*, no. 52.)

⁴When the question of the Mississippi Valley was brought to his attention in 1778, and he was informed of the American demands regarding the navigation of the Mississippi, Vergennes wrote, "... je vous assure qu'il me paroitroit etonnant qu'on refusat a cette demande. Cependant il peut y avoir pour la negative des considerations locales que J'ignore, et qui peuvent meriter quelque attention." Vergennes to Gerard, October 28, 1778. (*E. U.*, V, no. 43, new 105.)

his geography, however, the West was not a part of the American colonies. It was the ancient Canada and Eastern Louisiana over which the French and Indian Wars had been fought; and altho the Frenchman had lost all in the struggle, he could not be compelled to rewrite his geography. The English also, in the "Quebec Act," had followed more closely French ideas of geography than those of their colonies. Thus it was that in 1778 a French officer describes the United States as bounded on the north by Canada, and on the west "still by Canada and the Indian tribes as far as the Mississippi."⁵

There is no evidence that Vergennes had ever considered the question of the navigation of the Mississippi until called upon to defend the seizure of English vessels in the Mississippi by Galvez in February, 1777. Vergennes learned of this action of the Spanish governor through the newspapers about the first of October. At that time he did not know that the English would complain, but he declared that any protest could not be founded on the common law of America, where each nation reserved to itself its exclusive navigation and its own commerce. He held that the English had no more right to carry on commerce on the right bank of the Mississippi than the French had to trade along the coasts of North America, where all French ships were arrested and seized.⁶ It is clear from this that Vergennes had not come to the Spanish view of the exclusive navigation of the Mississippi, for he described the Spanish rights to the right bank by an argument which would give the English control of the left bank. Later when the Spanish ministry sought to deprive the Americans of the right to navigate the Mississippi, Vergennes expressed his surprise.⁷

Spain did not in any way commit herself on the subject of the navigation of the Mississippi until, as previously noticed, the governor of Louisiana seized the Eng-

⁵*Archives de la Marine*, B4, 144, 23.

⁶Vergennes to Ossun, October 3, 1777. (*Esp.*, 586, no. 105, new 63.)

⁷Vergennes to Gerard, October 28, 1778. (*E. U.*, V. no. 43, fol. 105.)

lish ships in the river. Just what instructions the ministry had given the governor is not certain, but it has already been shown that his act was in accord with the policy of Galvez, the president of the council for the Indies. In October, 1777, Ossun wrote to Vergennes that Spain held to the opinion that England did not have the right to navigate the Mississippi or to deposit merchandise at its mouth.⁸ Spain further maintained that the silence with which the English received the news of the seizure of their ships gave grounds to believe that they acquiesced in her position.

Canada and the Floridas offered problems distinct from that of the West proper. American efforts to annex the former have already been described, and they did not cease until the close of the Revolution. Great Britain had no intention of surrendering this province, and France had no interest in helping the United States to take it. The Floridas offered still less difficulty. It was recognized by all that Spain was anxious to recover them, and the Americans were willing to aid this project in return for recognition and assistance.

The Declaration of Independence brought the question of the extent of the new republic at once to the front, and with the problem of boundaries is connected every diplomatic negotiation of the American Revolution. On September 17, 1776, Congress resolved on a plan of treaty to be proposed to the king of France, Article IX of which provided that "the most Christian King" shall never invade nor under any pretense attempt to possess himself of Labrador, New Britain, Nova Scotia, Acadia, Canada, Florida, or any other part of North America. It further declared its intention to annex these territories to the United States,⁹ but assured Spain that it had no designs on her possessions, and would in no case molest them.¹⁰

⁸Ossun to Vergennes. (*Esp.*, 586, no. 138, new 118.)

⁹*Journals of Continental Congress* (Ford ed.), V. 770.

¹⁰Instructions to agent at court of France. (*Ibid.*, 816.)

At the same time Congress elected Benjamin Franklin, Silas Deane, and Arthur Lee as American commissioners to France, and appointed a committee to draft instructions for them. This committee reported that if France would aid the United States in reducing Nova Scotia, Newfoundland, and Cape Breton, the French people should be allowed equal rights of fishing there with the Americans to the exclusion of all others. The commissioners were also to offer France half of Newfoundland provided the remainder of the Island, with Nova Scotia and Cape Breton, were annexed to the United States. If necessary to get French aid the commissioners were to assure "his most Christian majesty that such of the British West India Islands as, in the course of the war, shall be reduced by the united forces of France and the United States shall be yielded in absolute property to his most Christian majesty." The committee also suggested the advisability of getting Spain into the alliance, and that, in return for her aid the United States would assist her in the reduction of Pensacola, if to them should be left "the free and uninterrupted navigation of the Mississippi and the use of the harbour of Pensacola."¹¹ Nothing was said of the West, but it was not long before a claim to it was set forth. The West was not considered a subject for negotiation, for it was held to be already a part of the union of states. These instructions were the first declaration by Congress of its attitude regarding that part of British America not in rebellion.

Of the commissioners chosen by Congress only Franklin was of first rate ability. He was undoubtedly the great statesman of the Revolution. He had done much for his country before becoming commissioner to France, but it was in Paris that he was to accomplish the great work of his life. A man of broad experience and wide attainments, he soon made himself master of the situation. His versatility and genial sympathy made him fit easily into the

¹¹*Journals of Continental Congress*, VI, 1057.

distinctive characteristics of French life. The best known of all Americans, not only in politics but in philosophy and science as well, from the moment of his arrival he was a person to venerate and respect.

Franklin had long thought of the problems relating to the territories beyond the limits of the thirteen states, and the experience of years reinforced his ideas. As early as 1754, shortly after the Albany Convention, he had **drawn up a plan for the settlement of the western colonies** and had presented a strong argument why this plan should be carried out.¹² Again in 1760, during the struggles of the last French war, he had urged the importance of this section. "I have long been of the opinion," he wrote, "that the foundations of the future grandeur and stability of the British empire lie in America; and altho, like other foundations, they are low and are little seen, they are, nevertheless, broad and strong enough to support the greatest political structure human wisdom ever has created. I am therefore by no means in favor of restoring Canada. If we keep it, all the country from the St. Lawrence to the Mississippi will, in another century, be filled with British people."¹³ Thus, as early as 1760, Franklin had a juster view of the West than did the leaders of the nation thirty years later. With a breadth of vision, greater than that of any other man of his day, Franklin saw the grandeur of the West. In a paper on the "Interest of Great Britain" he asserted that "while our strength at sea continues, the banks of the Ohio, in point of ease and expeditious conveyance of troops, are nearer to London than the more remote parts of France and Spain to their respective capitals; and much nearer than Connaught and Ulster were in the days of Queen Elizabeth."¹⁴ To Franklin's appreciation of the West and its resources, and to his foresight and watchfulness during the years of his residence in France, is due,

¹²Franklin, *Works* (Smyth ed.), III, 358.

¹³*Ibid.*, IV, 4.

¹⁴*Ibid.*, IV, 72.

more than to any other cause, the preservation of American domination in the Mississippi Valley.

Franklin arrived at Paris in the middle of December, 1776, and on the twenty-third he, with Deane and Arthur Lee, addressed a note to Vergennes, informing him of their mission and requesting an audience. The request was granted, the commissioners were courteously received, and they submitted to the French minister a sketch of the treaty suggested by Congress. The commissioners also urged upon Vergennes that France and Spain unite with the United States to deprive Great Britain of her West India possessions. They also offered to guarantee the possessions of France in the West Indies and such other conquests as she might make there. France was also to have a favorable commercial treaty, by which her ports were to receive the trade which formerly flowed into British markets. In return, the Americans asked only that France should renounce all claims to the mainland of North America. They also urged a treaty of recognition and commerce.¹⁵

Altho Vergennes returned no answer to the American overtures, he was surprised and pleased at their moderation. He felt no objection to giving the United States a free hand in North America, and he was gratified at the offer to guarantee French possessions in the West Indies, altho he declared the faith of a republic was little to be relied upon. He believed, moreover, that a favorable commercial treaty would give France all the advantages of colonies without the trouble and expense of governing them.¹⁶

During the next few months the Americans presented in greater detail the desires of Congress. Deane submitted a memorial to Vergennes urging a treaty with France for the "common security" of the two countries. He urged that the whole British Empire in America be conquered,

¹⁵Wharton, *Dip. Cor.*, II, 239-246.

¹⁶Vergennes to Ossun, January 4, 1777. (*Esp.*, 583, no. 6, new 2. Same to same, January 12. (*Ibid.*, no. 20, new 53.)

France to get the West Indies and a share of the Newfoundland fisheries, while all the remainder was to go to the United States.¹⁷

It is probable that this proposal of Deane did not receive any serious consideration from Vergennes, for he soon came to the conclusion that it was necessary to keep Canada in the hands of the British in order to maintain the balance of power in America, and to make the United States dependent upon France.¹⁸ It is not unlikely, however, that Vergennes was willing to allow the United States to make such conquests as they could in the West, the Floridas, and even a part of Canada, but he would never consent to use French blood in extending the boundaries of the republic. Since France, herself, had no intention of adding to her dominions, it was a matter of little moment to her what became of the British Empire when it fell.¹⁹

The Americans were willing to surrender their claims to the Floridas in return for Spanish assistance.²⁰ Franklin early discerned, however, the wide stretch of Spanish ambition; and, before it could declare itself, he demanded from Florida Blanca an express acknowledgment of the

¹⁷Deane to Vergennes, March 18, 1777. (*E. U.*, II, no. 72, fol. 131.) Deane had written to Jay, December 3, 1776, that articles such as he here proposed had been shown to him (*Sparks, Dip. Cor.*, I, 70), but it is probable that he meant he had suggested them himself, which is the truth. Deane was fertile with suggestions regarding the West. In December, 1776, he suggested to Congress the formation of a state north of the Ohio (*Wharton, Dip. Cor.*, II, 203), and in March, 1777, he proposed to designate, as security for a loan, three thousand square miles (he writes three thousand miles square) of the most fertile land on the rivers Ohio and Mississippi, one acre of land to be given as security for each livre subscribed. (*E. U.*, II, no. 75, fol. 135.)

¹⁸Memoire au Roi, July 4, 1777. See p. 58, note 1. It is possible that Vergennes informed the king that Canada should remain British in order to allay the fear which that monarch had of republics, for later he showed himself willing to aid the Americans against Canada.

¹⁹Vergennes to Aranda, March 11, 1777 (*Esp.*, 583, no. 155); April 10 (*ibid.*, 584, new 21).

²⁰Lee made this offer on his mission to Spain. See p. 53, note 70.

right of the Americans to the free navigation of the Mississippi River.²¹ Thus was the issue between Spain and the United States raised. The demand for the right to navigate the Mississippi could mean only that the United States had in mind to claim the left bank of the river, and thus come in contact with the Spanish colony of Louisiana. All the fears which the Spanish ministers had entertained had now become threatening. The new republic would be a constant menace to Louisiana, and would likely either seduce it into rebellion or conquer it. With such a belief the Spanish ministry felt it necessary to do everything possible to limit the boundaries of the new republic; and this led to an effort to hold as much of the east bank of the Mississippi as it could lay claim to. Here lay the root of a vital antagonism between the two countries, and a rivalry which did not cease until Spain was driven off the American continent.

Spain had a strong commercial interest in maintaining control of the Gulf of Mexico. The English had used their right to navigate the Mississippi and their control of Mobile and Pensacola to carry off much of the trade of the Mississippi Valley. Spain now saw that if she were to remain the dominant power in the lower Mississippi she must cut off every source of competition. This meant that the Floridas and the control of the river must be the objects of Spanish diplomacy in America, and with these in the possession of Spain, the Gulf of Mexico would become a Spanish lake.²²

While the West was becoming the subject of European diplomacy, its possession by the United States was held by Congress to be beyond question. Other questions of territorial right, however, were constantly engaging the attention of this body. The project for annexing Canada was

²¹Franklin, *Writings* (Smyth ed.), VII, 40.

²²This phase of the subject did not come up till later, but Florida Blanca doubtless long held it in mind. See p. 80.

always before it.²³ Plans of attack were prepared and many schemes for obtaining assistance were urged.

The Floridas claimed equal attention, but they were thought of as only an inducement to get the help of Spain. The original intention of Congress to annex them to the United States was soon lost sight of in the need for foreign assistance, and at the close of 1776 the American commissioners were authorized to pledge the help of the nation in conquering them for Spain.²⁴ To this promise, however, was attached the proviso that the free navigation of the Mississippi and the use of the harbor of Pensacola should be accorded the citizens of the United States.

It is possible that some concessions on the part of Congress were induced partly by the efforts of the Spanish agent, Don Juan de Miralles, who came from Havana to the United States some time in 1777 as a secret and un-accredited agent of Spain. He spent some time at Charleston, where he was active among the revolutionists. Later he went to Philadelphia, where he became acquainted with several members of Congress and apparently secured their confidence. He tried to get the support of Congress for a combined expedition of Americans and Spaniards which he and Governor Henry planned to send to conquer the West.²⁵

The great aim of Miralles, however, was to secure the claims of Spain to the Floridas and to the exclusive navigation of the Mississippi River. Beyond that he wished to extend Spanish authority as far as possible.²⁶ Spain had carefully prepared the way for her agent by showing new favors to the Americans and by furnishing them with supplies. Galvez, who became governor in January, 1777, promised that he "would go every length possible for the

²³*Journals of Continental Congress* (Ford ed.), Dec. 30, 1776; *ibid.*, VI, 1056 (Dec. 2, 1777); *ibid.*, IX, 985.

²⁴*Ibid.*, VI, 1057.

²⁵Gerard to Vergennes, July 25, 1778. (*E. U.*, IV, no. 41, fols. 142-147.)

²⁶*Ibid.*

interest of Congress."²⁷ Under his administration, New Orleans became a depot for supplies for the American troops. Oliver Pollock, the agent of Congress, was allowed to carry on operations unchecked, and Spain and the United States seemed already in alliance.²⁸

The question of the West, however, was still unsettled. Spain's designs were, as yet, not fully known; but the navigation of the Mississippi had already become an issue. The great Southwest was soon to become the subject of dispute, and the Northwest was as yet unwon. Great Britain still held Detroit and other important posts, and these must be captured before the States could make good their claims. Congress had practically abandoned all claims to the Floridas, and Canada was still untaken. The outcome was uncertain, and experience was to show that it depended upon two things—hard fighting and shrewd diplomacy.

²⁷Oliver Pollock to Congress, September 18, 1782. (*Papers of the Continental Congress*, no. 50, no. 1, fol. 1.) In August, 1776, Gov. Unzuga granted a "Batteaux load of the King's Powder." *Ibid.*

²⁸*Ibid.*; *E. U.*, IV, no. 41, fol. 142. The aid given by Galvez to the Americans was not unknown to the British. In the Public Record Office are numerous accounts of this. According to one the Americans were given a public guardhouse in New Orleans, and were permitted to sell openly plunder taken from the British. They were also allowed to fit out armaments and Spanish ships were furnished to take supplies up the river. *Memorials of Alexander Graydon, Robert Ross, John Campbell.* (*C. O.*, 5, 117.)

CHAPTER IV

THE FRENCH ALLIANCE.

The year 1777 was full of unrest in the politics of Europe. It was characterized by the tortuous policy of Florida Blanca, the double dealing of Vergennes, and the suspicion and distrust felt by British statesmen for their neighbors. Vergennes was constantly trying to bring Florida Blanca into a war which he had resolved to avoid, and the Spanish minister was seeking to force concessions by a system of ever-changing threats and promises. Great Britain was swayed between her need for peace and her indignation at the unfriendly attitude of the Bourbon powers.

Vergennes was still unacquainted with the vastness of Spain's ambition, but he realized that he had a gigantic task in bringing her into the struggle against Great Britain. Florida Blanca frequently declared his anxiety to maintain the alliance with France, and often expressed his willingness to go to war, but in every crisis he found some pretext which enabled him to avoid fulfilling his promises.

The Bourbon powers, however, were constantly increasing their preparations. Vergennes was in deadly earnest, and Florida Blanca knew that if he were to win any concessions a show of force at least was necessary.¹ Under these circumstances there were advanced many projects of war. Altho the two countries had stationed fleets in the West Indies, they still thought it necessary to make

¹Florida Blanca wrote to Aranda, March 3, 1777, that while Spain desired peace, it was necessary to get ready to carry on a vigorous war. (*Esp.*, 583, no. 140, new 1.) He also informed Ossun of his intention to strengthen Spanish defenses. Ossun to Vergennes, March 3 (*ibid.*, no. 136); February 27 (*ibid.*, no. 127, new 24).

other plans to protect their interests.² The extreme weakness of the naval equipment of the two countries in the West Indies was regarded as dangerous to the safety of Bourbon possessions there, for it was believed that the end of the American war meant an attack upon them. The plans of the naval heads of the two countries were to carry on a defensive naval war, until, if their undertakings should prosper, they would be in position to attack some important places, such as Jamaica, Gibraltar, and Grenada, and possibly make a descent upon England or Ireland.³

Both Vergennes and Florida Blanca declared that their policies were in complete accord.⁴ But in spite of their assertions this agreement was only on expedients and was not on anything fundamental. They saw that the continuance of the war in America was beneficial to their interests, and so they were willing to support the insurgents. Here their agreement ended.

On the fundamental question of the policy to be pursued there was a wide difference. The belief of the Spanish minister that he could attain all the ends of his country while keeping the peace has already been explained. Vergennes was very skeptical of the success of such a policy,⁵ and insisted strongly on the necessity of war as the only outcome.

²*Archives de la Marine*, B4, 128-131.

³*Ibid.*, 135.

⁴"Les principes d'après lesquels la Cour de Madrid a dirigé ses réponses au M. Lee sont entièrement conformés à ceux que nous avons adopté à l'égard des insurgens . . ." Vergennes to Ossun, March 25, 1777. (*Esp.*, 583, no. 186, new 23.) Florida Blanca said that the two crowns were in accord on the "fondamental principes." To Aranda, March 5, 1777. (*Ibid.*, no. 140.)

⁵Vergennes to Ossun, June 21, 1777. (*Esp.*, 584, no. 140, new 38.) Vergennes urged Ossun to press Florida Blanca for his memoir advocating the belief that it is possible for the two crowns to intervene in America without taking part in the war. "If he has in his familiar conversation any opinions on this subject, please inform me; altho I do not hold it impossible that the minister should have an outlook more extended than my own."

The political situation was further complicated by the suspicious attitude of Great Britain. At the beginning of the American insurrection the good will of France was taken by British statesmen as practically assured.⁶ Before the close of 1775, however, the court of London was becoming suspicious. Accusations were made freely that French aid was given the rebels. "Your Lordship will not think that I am of such easy credulity as to believe that they do not connive at Succours being sent from this country to America," wrote Stormount from Paris. ". . . This, however, My Lord, I never pretend to see, but always seem to be entirely satisfied with the assurances they give me."⁷

Throughout the years 1776 and 1777, Stormount was busy protesting against French violations of neutrality. He suspected that Vergennes had gone so far as to sign a convention with the Americans, and often threatened war.⁸ Spain also was credited with hostility to Great Britain, and at the close of 1777 Stormount summed up his conclusions as follows: "I have not a shadow of doubt that this court and that of Madrid are combined against us and have long been preparing and still continue to prepare for the execution of some insidious design."⁹

With Great Britain suspicious and Spain defiant, the problem of Vergennes was a delicate one. Grimaldi had

⁶St. Paul, chargé d'affaires at Paris, to Earl of Rochford, Secretary of State for the South, September 30, 1775. (*F. O. France*, 541; Stevens, *Facsimiles*, XIII, 1303.) Stormount, British ambassador to France, to Rochford, October 31. (Circourt, III. 1.)

⁷Stormount to Weymouth, December 6, 1775. (*F. O. France*, 542; Stevens, *Facsimiles*, XIII, 1307.) Stormount goes on to say, "There is every reason to believe that if Choiseul came into power he would instantly take a decided step against us . . ."

⁸Correspondence of Stormount with British foreign office. (*F. O. France*, 545; Stevens, *Facsimiles*, XIV.) Stormount wrote, March 26, 1777: "I have tried to get direct proofs of this duplicity and have used every endeavor to discern if there exists any treaty or written agreement between this court and the rebels. I can find no traces of any such convention . . . I am assured that the ministers here wish nothing in writing." (*F. O. France*, 547; Stevens, *Facsimiles*, XV, 1497.)

⁹*F. O. France*, 551.

long since declared his willingness for war, and just before his retirement from office had asked only that it be postponed until the Spanish treasure ships should come in. The fleet had long since arrived with all its stores of wealth, but still Spain hesitated. To the urgings of the French the Spanish ministers replied that they were not yet ready.

The year 1777 was allowed to wear itself out with fruitless bickerings between the two powers. Vergennes continued his policy of urging Spain to war, sometimes with bright prospects of success, more often with complete defeat. At times Florida Blanca would talk in tones of undoubted belligerency; but when he had almost committed himself he would find some pretext on which to draw back.¹⁰

Meanwhile Vergennes was getting into more serious difficulties with Great Britain. He had gone too far to retrace his steps, and war for France had become an absolute necessity. French aid had been given almost openly to the insurgents,¹¹ and a powerful fleet sent to America.¹²

¹⁰Florida Blanca suggested in August, 1777, a plan to combine against England as soon as the treasure fleet should arrive, and the fishermen should return from Newfoundland. Ossun to Vergennes, August 21. (*Esp.*, 585, no. 131, new 93.) He declared that the treasure ships could not return before the next May. (*Ibid.*, no. 106.) Vergennes agreed to wait and be very careful, for he declared that England would seize the ships which carried fifty million piastres on the slightest pretext. Vergennes to Ossun, August 22. (*Ibid.*, no. 137, new 51.) In September Florida Blanca arranged with France to send troops to America. (September 1, *ibid.*, 586, no. 3.) He declared his approval of French measures and declared he would begin war if France were attacked. Ossun to Vergennes, September 8. (*Ibid.*, no. 33, new 103.) The next day he declared in favor of the continuation of the American war, but urged a pacific policy for the Bourbon crowns. Paper handed to Ossun, October 17, 1777. (*Ibid.*, 586, fol. 226.) From this time on Florida Blanca would say nothing in favor of war.

¹¹Stormount to Weymouth, January 11, 14, 19, 21, 22. (*F. O. France*, 552.) Wentworth to Eden, December 28, January 1, 6. (Stevens, *Facsimiles*, III, 322, 327.)

¹²Vergennes to Ossun, September 19, 1777. (*Esp.*, 586, no. 58, new 147; September 26, *ibid.*, no. 59, new 147.)

British and French recognized alike that peace could not long be preserved.¹³ Vergennes himself declared that the position of France every day became more critical and the duration of peace more uncertain.¹⁴

The surrender of Burgoyne meant to Vergennes that the crisis had come. He knew that the time was at hand for France to strike; to humiliate her ancient enemy and to regain her former position in the family of nations. He declared that France could now extend her commerce and fisheries without interference, and could assure the peaceful possession of her islands without the danger of British aggression.¹⁵ "We must now either support the colonies or abandon them," he argued. "We must form the alliance before England offers independence, or we will lose the benefit to be derived from America, and England will still control their commerce."¹⁶ Independence was felt to be so important that France must recognize it even without the support of Spain.

Before Vergennes began war, however, he wished to secure the active cooperation of Spain. News of the sur-

¹³Stormount wrote October 1, 1777, that France would interfere within three or four months. (*F. O. France*, 550; Stevens, *Facsimiles*, XIX, 1710.) De Noailles, French ambassador to London, wrote, January 31, that he saw hostile intentions in London. (*Ibid.*, XIV, 1421.) Stormount's protest were couched in threatening tone. See note II.

¹⁴Vergennes to Noailles, August 30, 1777. (Stevens, *Facsimiles*, XVIII, 1666.)

¹⁵"Les avantages qui resulteroit de la [intervention] Sont innombrables nous humilierons notre enemi naturel, un ennemi perfide qui ne sont jamais respecter ni les Traites ni les droits des nations nous de tournerons a notre profit une des principales sources de son opulence nous ebranleons Sa puissance, et la reduirons a sa juste valeur nous etendions notre commerce, notre navigation, notre pêche, nous assurerons la possession de nos Isles, Enfin nous retablirons notre consideration et nous reprendrons parmi les Puissances de l'Europe la place qui nous appartient." "Consideration upon the necessity of France declaring at once for the American colonies." (*Angleterre*, 528, fol. 88; Stevens, *Facsimiles*, XXI, 1835.) Unsigned; but the style is that of Vergennes and the opinions set forth are in strict accord with his policy.

¹⁶Vergennes to Montmorin, January 23, 1778. (*Esp.*, 588, no. 17, new III.)

render of Burgoyne reached Paris on the night of December 7, 1777.¹⁷ Four days later Vergennes sent a despatch to Montmorin, the new minister to Spain, asking for a Spanish alliance. He declared he would ask nothing hard of the Americans, only a treaty of commerce and the guarantee of French possessions in America; and he expected that Spain would ask nothing more.¹⁸ Evidently he feared this would not be satisfactory to Spain, for on the thirteenth he wrote again: "Perhaps Spain still regrets the loss of Florida which gives to the English an easy access to the Gulf of Mexico." He doubtless knew that Arthur Lee had offered Florida to the Spaniards, but he cautiously continued: "I do not know what the Americans think in regard to this . . . but it is natural to suppose that they would not hold very strongly to a thing they do not possess, and which, it seems to me, is not of much importance to them."¹⁹ Vergennes had not yet seen the importance of the territorial question in the war. He was bidding for the help of Spain, but it did not occur to him to offer more of North America than the Floridas.

Montmorin sought out Florida Blanca, and asked for an alliance with the Americans. He presented the dangers of reconciliation and an attack by Americans and English combined upon Spanish America. He offered the Floridas, but the Spanish minister was unaffected. He declared that the Spanish fleet was poorly prepared for battle and would fall an easy prey to the English. To excuse his attitude he blamed the French for not going to war when he was ready. He further maintained that there was no danger of reconciliation; and, under no circumstances, would the king treat with rebels.²⁰

In spite of the refusal of Florida Blanca, Montmorin

¹⁷*Esp.*, 587, no. 92.

¹⁸December 11. *Ibid.*, 587, no. 99.

¹⁹*Ibid.*, 587, no. 103.

²⁰Montmorin to Vergennes, December 23. (*Ibid.*, 587, no. 125.)

believed that if France should enter the war Spain would be bound to follow.²¹ His efforts, however, led to further rebuffs. At an interview on January 4, Florida Blanca declared angrily that there was neither object in beginning war nor plan in conducting it.²² The aims of the Spanish minister, however, soon became apparent. To Aranda he wrote that France had much to gain from war, while for Spain there was nothing to gain and much to lose. France was looking to the conquest of the rich sugar isles, he continued, and possibly the fisheries of Newfoundland; but these could have no interest for Spain. The Spanish monarchy could have no other object, he insinuated, than the recovery of some of the "shameful usurpations" of Great Britain, "Gibraltar, Minorca, and to drive the English from the Gulf of Mexico, the Bay of Honduras, and the coast of Campeche."²³ Here was the program of Spain. It meant that she aimed not only at the Floridas in North America, but at the control of the Mississippi River, with both its banks as well. To this policy Florida Blanca adhered, and he did not enter the war until he had some assurance that it would be successful.

The British also were becoming aroused over the question of the territories. The debates in Parliament were long and bitter. Shelburne contended that if the rebellious colonies were to secure their independence they would not stop at that. He expressed his high opinion of the moderation of the American people, but declared that Congress looked further and was likely to inspire them with hopes of conquest and extent of dominion. "Should this be the case," he exclaimed, "the remainder of America must fall." He declared that the demands of the Ameri-

²¹*Esp.*, 587, no. 125.

²²"Dans la chaleur d'une de nos conversations il m'a dit votre Cour veut traiter avec les Americains la guerre resulteret elle n'a ni objet en la commencement ni plan pour le faire." Montmorin to Vergennes, January 5, 1778. (*Ibid.*, 588, no. 1, new 7.)

²³Florida Blanca to Aranda, January 13, 1778. (*Ibid.*, 588, no. 21.)

cans would ultimately lead to the loss of the West Indies and even of Ireland.²⁴

Altho the British were determined to continue the war, if necessary, for the sake of peace, they were willing to offer any concession short of independence. To this end Hutton, chief of the Moravian Brethren in England and America, and a friend of both George III and Franklin, was sent to Paris. Franklin would consider no terms unless independence were granted; and he appealed to the magnanimity and good will of the British nation for a just settlement. "You should not only grant such as the necessity of your affairs may evidently oblige you to grant," he urged, "but such additional ones as may show your generosity and may thereby demonstrate your good will. For instance, perhaps you might, by your Treaty, retain all Canada, Nova Scotia, and the Floridas. But if you would have a real friendly, perhaps able ally in America, and avoid all occasions of future discord, which will otherwise be continually arising on your American frontiers, you should throw in those Countries. And you may call it if you please, an Indemnification for the needless and cruel burning of their Towns, which Indemnification will otherwise be sometime demanded."²⁵

In spite of the hesitancy of Spain, Vergennes pushed his plans for war. It was clear that peace could no longer continue, and English and French were expecting the outbreak of hostilities at any moment.²⁶ Vergennes was afraid that if France did not take part in the war in Amer-

²⁴*Parliamentary Register*, X, 380. Benj. Vaughn to Franklin, April 28, 1778. (Franklin, *Works* (Smyth ed.), VII, 151.)

²⁵Franklin, *Works* (Smyth ed.), VII, 100. The visit of Hutton created quite a stir in Paris and there was fear that he would succeed in affecting a reconciliation.

²⁶Garnier, the French ambassador at London, wrote that England regarded herself as already at war; and on February 2, Sartine, the minister of marine, asked for an embargo on English ships in French harbors. Doniol, *Histoire*, II, 747. English statesmen knew of the proposed treaty on January 1. Wentworth to Eden, January 1. (Stevens, *Facsimiles*, III, 327.)

ica England would succeed in bringing about a reconciliation with her colonies and would then attack France.²⁷ On January 7 at a meeting of the cabinet, the whole situation was gone over. Vergennes presented a long memorial to the king in which he urged immediate war. "England," he declared, "must soon seek peace. She must grant independence, and will then seek compensation in a coalition with the United States for an attack on the two crowns." He declared that England would keep New York, and with that base could easily conquer the possessions of France and Spain, while the insurgent privateers would harry their commerce. The Americans, he urged, "will easily be led to go further by the bait of the riches of New Spain, sufficient to relieve both states of the burden of their debts. The exclusive navigation of the Mississippi which will make the possession of Mexico precarious will, in itself, be a powerful inducement for the Colonies, and they will willingly undertake anything, because they will have nothing to fear on their continent from the vengeance of the two Crowns." Such an issue, he declared, would be realized at once if England would recognize the independence of America, and he urged war before it should be too late.²⁸

The will of Vergennes prevailed and war was decided upon. Gerard de Rayneval Vergennes's secretary, was commissioned to treat with the Americans. Rayneval, like his master, strongly suspected the Americans of a willingness to be reconciled with the mother country, and his suspicions were heightened at his first interview with their representatives. Accordingly he lost no time in assuring them that the king would recognize their independence at once and make a treaty with them. He declared that France had in view no aggression, and wished only to enfeeble her enemy. He then urged the Americans not to be seduced by promises from England. To Franklin's query Rayneval

²⁷Vergennes to Montmorin, January 16, 1778. (*Esp.*, 588, no. 23.)

²⁸Vergennes: Paper submitted to the king and marked by him "approuv  ," January 7, 1778. (*Ibid.*, 588, no. 10, new 13.)

replied that France would not begin war until every other means of securing independence were exhausted. Franklin then stated that an immediate treaty alone would bar the Americans from negotiations with the British. This alarmed the French agent, and he assured Franklin that France would begin the negotiations at any time.²⁹

The treaty of alliance between France and the United States was drawn on the lines agreed to by Rayneval and Franklin. It provided for mutual aid in the war, and declared that all conquests made on the continent of North America should belong to the United States, and France formally renounced all claims to any part of the former New France or Eastern Louisiana. In return for this renunciation she was to have all conquests made among the islands of the West Indies.³⁰

The provisions regarding the territories were in accord with the instructions of the American Congress and did not, at any point, antagonize the policy of Vergennes. He still insisted that all France desired was the independence of the United States and the consequent enfeeblement of Great Britain.³¹ The American commissioners were likewise satisfied, and wrote to Congress that the terms were such as they might readily have agreed to, if the United States were in a condition of full prosperity and established power.³²

This treaty of alliance meant war. On March 10, Vergennes wrote to the French embassy at London enclosing a copy of the articles. The messenger arrived at his

²⁹Rayneval said of the king "qu'elle étoient exempté de toute vue d'ambition et d'aggrandissement qu'elle ne vouloit qu'oper irrevocablement et complètement l'indépendance des Etats Unis qu'elle y trouveoir l'intérêt essentiel d'affoiblir son ennemi naturel" Narrative of Conference with American Commissioners, January 9, 1778. (*E. U., Memoirs et Documents*, I, no. 17; Stevens, *Facsimiles*, XXI, 1831.)

³⁰*Treaties and Conventions*, 242.

³¹Vergennes to Montmorin, March 17, 1778. (*Esp.*, 588, 150, fol. 25.)

³²Wharton, *Dip. Cor.*, II, 490.

destination on the 13th and on the 17th Great Britain declared war.³³

When Vergennes signed the treaty of alliance with the United States he had good reason to think that Spain would soon accede to it. The historic kinship and union of the two crowns, their longstanding hatred of Great Britain, and their common interest in humiliating her, all induced Vergennes to expect a united front against the common foe. Furthermore, Spain had promised^d to aid France if Great Britain attacked her, and had often expressed her willingness for war. Altho during the few months preceding the treaty between France and the United States Spain had looked coldly upon the very suggestion of war, still, French statesmen thought she would join in the struggle as soon as it began.³⁴ Spain is anxious to recover some of her former possessions, they argued; and, if she will join with France, she will have an opportunity to make many rich and valuable conquests.

In spite of the urgings of the French, Florida Blanca still hesitated. France expected to gain much, he argued, in commercial advantages and prestige from a war with the British Empire, while Spain had only to calculate the probability of loss. She could expect nothing from the trade with the United States, and could gain no influence in European diplomacy if she allowed France to map out her policy. France could look to the conquest of English islands and the Newfoundland fisheries, he argued, and could hold them by her naval power; Spanish possessions were in great danger from the English navy, and it would be difficult to attain the objects of Spanish ambition: the recovery of Gibraltar and Minorca, and the expulsion of the British from the Gulf of Mexico.³⁵

³³Doniol, *Histoire*, II, 822.

³⁴Montmorin wrote to Vergennes, March 30, 1778, that he did not doubt that, if France had any success, Spain would have her cupidity aroused and make an attempt to recover Florida and above all Gibraltar. (*Esp.*, 588, no. 175, new 21.)

³⁵*Ibid.* Montmorin to Vergennes, March 30, 1778. (*Ibid.*, no. 175, new 21.)

There is no doubt but that the enmity of Spain for Great Britain was genuine and deep. The whole Spanish policy had been hostile to the British court. Spain had protested vigorously against the great armaments which England was sending to America and was correspondingly increasing her own; but in spite of this the Spanish monarchy was bent on peace. There were several reasons for this. Spain was mortally afraid of losing her colonies before the overwhelming power of the British navy. She realized that her finances were not in condition for war, and that they would be further crippled by cutting off the supply of precious metals from her American possessions. And then, as Florida Blanca declared, "between England and America there is a sort of equality of enmity that makes it difficult to desire that either side win."³⁶ He did make it clear, however, that the proper concessions might make Spain enter the war. The *sine qua non* of any arrangement, however, must include the Floridas. The Spanish were particularly desirous of this territory, because it controlled the entrance to the Gulf of Mexico which they wished to make a Spanish lake. It was a source of great annoyance to them that their ships could not get from New Orleans to the ocean without almost touching the coasts of an English province.³⁷ The Spanish desire to control the Gulf of Mexico made inevitable an attempt to get possession of the Mississippi Valley.

News of the conclusion of a treaty of alliance between the United States and France aroused in the mind of Florida Blanca the greatest apprehension. Spain had long

³⁶Montmorin to Vergennes, February 2, 1778. (*Esp.*, no. 80, new 11.)

³⁷"M. le Cte de Floride Blanche me disoit dernièrement qu'il aimeroit mieux qu'on eut cédé la moitié de l'Amerique que la Floride en effet il ne peut rien sortir du golfe du Mexique, sans presque raser les côtés de cette province. Quant a un etablissement a Terre Neuve, je crois qu'il souffrirait bien des difficultes: vous pouvez etre sur, M que ces deux points formeront la baze des demandes de l'Espagne, si elle entre en negociation avec les Americains." Montmorin to Rayneval, February 2, 1778. (*Ibid.*, 588, no. 11.)

been the friend of France and he realized that it would be exceedingly difficult to maintain neutrality. "You believe that the actual circumstances are most happy for the two crowns," he cried to Montmorin; "I regard them as most fatal for Spain." Charles III listened patiently and courteously to Montmorin's explanations; but he declared that the situation was most critical and demanded the greatest caution.³⁸ Charles and his minister both believed, however, that Great Britain would soon attack the possessions of Spain and thus make war inevitable.

Vergennes maintained throughout a moderate attitude in his expectations for both France and Spain. He repeatedly declared that the sole desire of his country was to humiliate Great Britain and to raise her own prestige. He cared to add nothing to the colonial dominions of his country, but he was willing to bid high for the support of Spain. He had already suggested Florida as a suitable compensation for Spanish assistance, but he was soon convinced that he must offer more, and expressed his willingness to include Jamaica.³⁹ This was the beginning of a long series

³⁸"Le lendemain . . . j'ai été au Pardo communiquer a M. le comte de F. Blanche. Quoique j'eusse amené par differents preliminaires dont j'eusse a lui faire de la chose principale, je vous rendrait difficilement les different impressions que lui fit la lecture de votre dépêche. Tous les sentiments dont il etait affecté se peignaient sur son visage et dans ses gestes. Je le voyais qui faisait inutilement des efforts sur lui meme pour se contraindre, tremblait de tout son corps, et il avoit toutes les peines du monde a s'exprimer . . . vous croyez que les circonstances actuelles sont le plus heureuse pour les deux couronnes, et moi, je les regarde comme les plus fatales pour l'Espagne, ce join me paroitroit le plus beau de ma vie si Sa Majeste Catholique me permettoit de me retirer et d'aller finir mes jours tranquillement." Florida Blanca went on to blame Aranda for his part in the trouble but declared that the king would never consent to go to war. The king was much affected and declared "croyez-moi . . . les circonstances sont bien critiques, et il faut bien de la prudence. Il n'en est pas de l'Espagne comme de la France." Montmorin to Vergennes, January 28, 1778. (*Ibid.*, 588, no. 58, new 9.)

³⁹Vergennes to Montmorin, March 27, 1778. (*Esp.*, 588, no. 173, new 26.)

of ever-increasing bids on the part of France to be answered only by the ever-increasing demands from Spain.

In addition to making promises, Vergennes sought to show to the Spanish ministry the advantages of war. He urged that neutrality was dangerous, for England already had designs on Spanish America. With Great Britain mistress of all North America, she would always prove a dangerous neighbor, while there was nothing to fear from the United States, which would "remain quiet with the inertia that is characteristic of all constitutional democracies."⁴⁰ All these arguments, however, were unavailing. Spain maintained her policy of peace, and Vergennes turned his attention more towards the support of his new allies; but he did not give up hope of ultimately securing the cooperation of Spain. The instructions which he gave to Gerard, the first French minister to the United States, looked to the interests and ambitions of the Spanish court. Altho Gerard was not to speak for Florida Blanca, he was to use his influence with the Americans to get them to concede the Floridas, or at least Pensacola and those parts of the coast which would be of most "convenience" to Spain.⁴¹

The instructions which Vergennes issued to Gerard were not designed merely to serve Spanish ambition, but were in accord with the fundamentals of French policy. In recognizing the United States of America, Vergennes believed that he was erecting a powerful barrier against the dominance of the British Empire, while weakening it by lopping off an important member. He early recognized the impossibility of obtaining territories in America on account of the jealousy of the new republic, and he felt that France had no use for colonies which would drain the mother country of her population and wealth. Altho he did not seek any conquests in America, at the same time he did not wish to turn over all the British possessions

⁴⁰Vergennes to Montmorin, April 3, 1778. (*Esp.*, 589, no. 4, new 27.)

⁴¹March 29, 1778. (*E. U.*, III, no. 77, fol. 159.)

there to the United States. He had recognized the new republic as a step in the downfall of Great Britain; and, in order to insure the permanency of his work, he felt that his ally must be kept in a state of permanent dependence.⁴²

In the light of this belief Vergennes issued his instructions to Gerard. In regard to the propositions of the American commissioners that France should aid in the conquest of Canada, Nova Scotia, and the Floridas, he declared that the king considered "the possession of these three countries, or at least of Canada, by England would be a useful cause of disquietude and vigilance to the Americans, which will make them see all the more the need which they have of the friendship and alliance of the king, and which it is not to his interest to destroy." He was not, however, wedded to the idea of limiting the boundaries of the United States. Gerard was left much discretion in this matter, and he was instructed that by all means he was to keep the good will of Congress. If that body proposed any conquests, he was to assure it of the friendship of the king, but was not to enter into any formal engagement to effect its desires. If the republic became too pressing, Gerard was not to refuse to cooperate, but he was to make it understood that the retention of such conquest need not be a condition of the next peace. In no case, however, was he bound by hard and fast rules, but was to use his discretion. That he did so is amply proven by the history of his career in America.

When Gerard arrived^d in Philadelphia, he found that the Spanish agent, Don Juan de Miralles, had preceded him. The two soon became confidential friends. Altho Miralles did not show his instructions to the French representative, he soon made evident the expectations of his court in regard to the West. He exerted himself to show the advantages which France might reap from the conquest of Canada, and declared the right of Spain to all the other territory which the English had acquired by the

⁴²See p. 99, note 34.

treaty of 1763, and also to the exclusive navigation of the Mississippi River.⁴³ The suggestion that France should conquer Canada made no impression on Gerard; but he attempted to combat the ambitions of Miralles regarding the navigation of the Mississippi. He argued that the Americans already had claims to the back countries, and that in offering Pensacola to Spain they were intending to make good their claims to the West. He urged that Spain should not advance her demands at this time for by so doing she would merely bring on a dispute that might cause much trouble.⁴⁴ Miralles consented to postpone the issue and the matter of the territories was allowed to rest.

To Congress the treaty of alliance and the promise of French aid brought renewed hopes of the conquest of Canada. Washington had always been eager to get the British possessions along the St. Lawrence; and the failure of the early expeditions had not discouraged him. Gerard had promised the Americans both military and naval aid, and this was counted on to help in the expedition. Admiral D'Estaing arrived in America with a powerful fleet in July, 1778, and at once communicated with Gerard. He was planning to get St. John's or preferably Newfoundland

⁴³"Il [Miralles] a parlé très affirmativement de la bonne volonté de l'Espagne et du secours immediat de la France Il s'est efforcé d'établir qu'il falloit que la France conquît le Canada et l'Espagne tout ce que les Anglois ont acquis par le traité de 1763 en Floride et sur le Mississippi. . . . il se livroit à toutes les speculations que la possession des Florides et la navigation exclusive du Mississippi peuvent suggerer. J'ai été fâché de le voir mêler dans ses raisonnements la persuasion que les Americains seroient bientôt les ennemis de l'Espagne. . . . J'ai combattu cette persuasion par des motifs, Monseigneur que vous avez plusieurs fois discutés et j'ai observé qu'il paroîtroit sage d'éviter au moins de les nécessiter à le devenir immédiatement. Je l'ai persuadé de représenter à sa cour que jamais le congrès ne consenteroit de plein gré à renoncer à la navigation du Mississippi nécessaire pour servir de débouché aux établissements immenses que les Americains se proposent de faire sur l'Ohio et autres rivières affluentes." Gerard to Vergennes, July 25, 1778. (*E. U.*, IV, no. 41, p. 142.)

⁴⁴*Ibid.*

on account of its fisheries. He declared, however, that he saw no chance of satisfying Spain, which was "possessed of a territorial mania and always felt herself ill used unless the compass of her territory was as large as the map." He suggested that the easiest solution would be to turn over St. John's and Newfoundland to the Americans and seek compensation for Spain and France elsewhere.⁴⁵ Gerard thought the proposition was worth serious consideration, and submitted it to Vergennes.⁴⁶

Long before the project of invading Canada was formally considered Gerard was aware that it was likely to come up. On July 16 he wrote Vergennes of the whole affair, and described American apprehension of the dangers to the United States, if Great Britain were allowed to keep both Canada and the Floridas. He did not believe, however, that the Americans would demand the assistance of French troops in any conquest that they might attempt.⁴⁷

In the fall of 1778 Washington began to prepare for his long cherished conquest of Canada. He expected to begin the invasion as soon as the British could be driven from their posts in the north. He considered the expedition of prime importance, but he was not very sanguine of success.⁴⁸ Lafayette also conceived a plan of his own for the invasion of Canada. He hoped to get enough assistance from France to make possible an attack by way of Detroit, another by Niagara, and still another up the Connecticut River, while the French fleet should sail up the St. Lawrence.⁴⁹ To his friend D'Estaing he wrote, "I can think of nothing but the happiness of being with you, of Halifax surrendering, of St. Augustine taken, of the British Islands on fire, and all confessing that nothing can

⁴⁵Ct. d'Estaing to Gerard. (*E. U.*, IV, no. 22, fol. 95.)

⁴⁶Gerard to Vergennes, July 15. (*Ibid.*, no. 20, fol. 90.)

⁴⁷Gerard to Vergennes, July 16, 1778. (*Ibid.*, no. 23, fol. 97.)

⁴⁸Washington, *Writings* (Ford ed.), VII, 192-198.

⁴⁹*Memoires, Correspondance et Manuscrits des Lafayette*. I, 208.

withstand the French."⁵⁰ This was but an outburst of patriotic enthusiasm and was entirely opposed to the plans of Vergennes; but it was successful in arousing the interest of D'Estaing. Congress, too, was so carried away by the young Frenchman's enthusiasm that it gave favorable consideration to his plan, and ordered it transmitted to Franklin for submission to the minister of foreign affairs.⁵¹ The Americans regarded the conquest of Halifax and Quebec as objects of the greatest importance, and in order to get the aid of France in this undertaking, they were willing to concede her a share in the fisheries and fur trade of that country. They reasoned that such an arrangement would give their frontiers greater safety and add two new states to the union.⁵² To American inquiries, Gerard replied vaguely that the king had the greatest good will for the success of the Americans, but did not pledge the cooperation of his country. To Vergennes he expressed the belief that the expedition would not be undertaken, for he knew that Washington could not spare the troops.

The attack on Canada was soon abandoned, tho for other reasons than those given by Gerard. Admiral D'Estaing issued a proclamation to the Canadians urging them to rise against the common enemy and to unite with their neighbors to the south.⁵³ The proclamation suc-

⁵⁰Towers, *Lafayette*, II, 14.

⁵¹*Journals of the Continental Congress* (Ford ed.), XII, 1042.

⁵²G. Morris carried on the negotiations with Gerard. He offered to give the French Newfoundland, if they would aid in the conquest of Halifax and Quebec. He pointed out that without the possession of Newfoundland France could never hope to get possession of the fisheries; and he promised that, if France would aid them, the Americans would attack at the same time all the points from the river of the Illinois to Quebec. Gerard hesitated from his knowledge that Washington must depend for his troops on the British evacuation of New York. Morris was distrustful of Spanish influence and observed that as long as Great Britain kept Canada she must be friends to the United States. In this he opposed the French argument that the British occupation of Canada was necessary to insure the friendship of the United States for France. Gerard to Vergennes, October 20, 1778. (*E. U.*, V, no. 33, fol. 68.)

⁵³*Archives de la Marine*, B4.

ceeded in creating a feeling of uneasiness among the Canadians, but it gave a bad impression of French motives to Washington and Congress.⁵⁴ Washington at once wrote to Congress disapproving the whole scheme, as the army was not in condition to undertake it.⁵⁵ There were, however, other than military reasons why he wished to abandon this plan. In a personal letter to Laurens he gave as an insurmountable objection the "introduction of a large body of French troops into Canada, and putting them into possession of the capital of that province, attached to them by all the ties of blood, habits, manners, religion, and former connection of government. I fear this would be too great a temptation," he wrote, "to be resisted by any power actuated by the common maxims of national policy." He feared that France in possession of Canada would become the most powerful maritime state of Europe, and joined by Spain in possession of New Orleans would make herself dictator of all America. If France should get possession of Canada no pledges could induce her to leave it; and she would drive the English from the seas and make the English speaking world her subjects.⁵⁶

The opposition of Washington gave the death blow to the project of conquering Canada. Congress at once voted the expedition impractical and informed Lafayette of that fact.⁵⁷

Vergennes regarded this proposed expedition as devoid of military significance. It may be of value as a military demonstration, he admitted, but France can not lend her weight to the annexation of Canada by the United

⁵⁴Kingsford, *Canada*, VI, 330.

⁵⁵Washington, *Writings* (Ford ed.), VII, 240.

⁵⁶*Ibid.*, 261.

⁵⁷*Journals of the Continental Congress* (Ford ed.), XII, 1190-91.

States.⁵⁸ He wished to maintain the policy toward Canada which he had outlined in his first instructions to Gerard. He still preferred that England should keep it; but if the United States insisted on some acquisition he would give them Nova Scotia. In no case would he consent to make such conquests an excuse for continuing the war. "We think that peace ought not to depend on secondary matters," he wrote, "and that the only point important to the United States is the recognition of their independence. We do not hesitate to stipulate in favor of Great Britain for the preservation of her actual possessions in North America." As to the proposal of Miralles that France should seize Canada, Vergennes replied decidedly in the negative. Such a course, he argued, would arouse distrust of France and bring about a rapprochement between Great Britain and America which would make futile the whole war.⁵⁹

Vergennes was not to show himself determined against the American occupation of Canada. He knew, however, the jealousy which Spain felt toward the United States, and he did not wish to take any stand that would arouse her displeasure. In February, 1779, he wrote to Gerard declaring that the question of Canada could not be determined until the close of the war; but in the meantime he was to "urge the Americans to make every effort in their power against the common enemy. It does not matter in what point," he continued, "but let them do all the harm they can. If they succeed in taking Quebec and Halifax,

⁵⁸"Je ne sais si les americains forment serieusement le projet d'attaquer le Canada mais dans ce cas je doute qu'ils y reussissent. . . . Cependant les Americains auront raison de faire des demonstrations propres a faire prendre le change a la Cour de Londres. . . . l'opinion de l'Espagne est qu'il conviendra de conserva le Canada et l'acadie a la grande Bretagne. . . . Mais je le repete, c'est aux circonstances a consolider ou a modifier notre plan et nos vues." Vergennes to Gerard, November 18. (*E. U.*, V, no. 7, fol. 78.)

⁵⁹Vergennes to Gerard, October 26. (*E. U.*, V, no. 43, fol. 105.)

well and good; and if this becomes a condition of peace, we can find other measures to reassure the court of Madrid."⁶⁰

On the question of Canada, Washington and Vergennes held almost identical views. Both saw the difficulties of allowing France to get possession of the country, and both saw the injustice of asking the French to aid in a conquest for which they were to receive no compensation. Both realized the power which the possession of Canada would give to France, and both knew that with the French established on their northern borders the United States would inevitably return to the protection of Great Britain.

Of more vital importance to the United States was the question of the West. With it, in the minds of Spanish statesmen, were connected the Floridas, but these latter did not offer so difficult a problem. The United States had offered them to Spain in return for her assistance, but without success. Vergennes had dangled the possession of them before the hungry eyes of Spanish ministers, but his efforts were unavailing. It was tacitly understood, however, that Spain might have them any time she was willing to go to war with Great Britain. The Americans planned in the early part of 1778 to conquer the Floridas in the interest of Spain,⁶¹ and there seemed to be no difference between the two countries regarding their disposition.

The West, however, was to prove a fertile ground for dispute. Florida Blanca had expressed his fear and hatred of the Americans, and had given this as the reason for not

⁶⁰"Nous devons respecter l'opinion de l'Espagne, et elle n'est pas favorable aux desirs du Congrès. . . ." Vergennes urged Gerard "vous borner à exhorter les Américains à faire tous les efforts qui sont en leur pouvoir pour faire à l'ennemi commun n'emporte dans quel point, tout le mal qu'il sera possible. S'ils réussissent à s'emparer de Québec et Halifax il faudra bien de leur laisser, si la paix devoit dépendre de cette condition: on pourra au pis aller prendre d'autres mesures pour rassurer la cour de Madrid." Vergennes to Gerard, February 19. (*E. U.*, VII, no. 101, fol. 250.)

⁶¹Gerard to Vergennes, July 16. (*Ibid.*, IV, no. 23, fol. 97.)

joining in the war which would bring them independence. He was not content with mere inactivity. He felt that if Spain was to maintain her position in the New World she must do something to check the growing power of the young nation which was seeking to establish itself there. For this purpose he had suggested that the British be guaranteed the possession of Canada. To this end he had sought the title to the Floridas, but even this did not satisfy him. Spain should control the Gulf of Mexico and the Mississippi River. This meant that the Americans must be barred from the whole area of the West.

On the question of the West, Vergennes did not at once commit himself. He recognized his obligations to his new allies and was anxious to get the assistance of Spain. He did not wish to offend the United States by an apparent favoritism to Spanish diplomacy, and he wished to get the confidence of Florida Blanca. Any arrangement which would be agreeable to the two powers, he was willing to accept.

CHAPTER V

FLORIDA BLANCA AND THE CONVENTION WITH FRANCE.

France alone was unequal to the struggle with Great Britain. For generations the two powers had been at war; and in every contest the final victory had lain with the island kingdom. It was difficult to believe that now, with the puny aid of a few revolting provinces, the Bourbon throne could blot out the defeats and humiliations of the past and triumph over its ancient rival. When Vergennes signed the treaty that called into life a new nation, the memory of 1763 directed his mind and the spirit of revenge guided his hand.¹ His rashness was self-evident. France was exhausted by a century of misrule at home and defeat abroad. Her finances were in wretched condition. Reform was urgent. Turgot declared that peace alone could work a cure.² Her navy, ruined in the Seven Years War, had never recovered its prestige and could not hope to fight the Britons on equal terms, and this was to be a naval war, a struggle on many seas.

Alliance with Spain was the hope of France. Their united fleets might well match that of Great Britain, and their combined resources were comparable to those of the enemy. Altho Spain had not approved the treaty of alliance, Vergennes felt he could count on her aid. The friendship of the Bourbon powers was of long duration, and sealed by treaties and family compacts. Together they had borne the humiliations and losses of many wars, and now Louis asked the cooperation of his Spanish cousin in

¹"Il paroît en effet que la providence a marqué cette époque pour l'humiliation d'une Puissance orgueilleuse, injuste, et avide, qui ne connoit jamais d'autre Loi que celle de son intérêt." Vergennes *au Roi*, marked "approve," Jan. 7, 1778, (*Esp.*, 588, new 22.) Doniol, *Histoire*, II, 765.

²Doniol, *Histoire*, I, 285.

what promised to be a Bourbon triumph. Spain wished to recover her ancient colonies; and it was a source of great humiliation to her that British guns guarded the gates of the Gulf of Mexico and the Mediterranean. A few months before, Florida Blanca had declared his readiness for the struggle, and had promised to back France when it should begin.³ Altho the tone of Spain's communications had since grown cold, Vergennes felt that there were sufficient reasons to overcome her hesitancy and push her into war.

Spain, however, had other ends in view. War or peace, each promised great rewards. War, and France assured her magnificent conquests; peace, and she might exact from Great Britain even greater concessions. Friendship for France and hatred for Great Britain both urged her to war. But casting aside the motives of hatred and friendship there stood the solid advantages and rosy expectations of peace. In war Spain was open to attack from all sides. Her extended colonies were an easy prey to the powerful navy of England, which in the preceding struggle had made rich prizes of Havana and far-off Manila. The loss of her colonial possessions was a fear ever present to Spain, and she was determined to take no action that would endanger them. As Florida Blanca declared, "Spain has a vast empire unprotected by sea, which will be in great danger from British aggression."⁴

To Spanish statesmen there appeared still another danger in fighting for the cause of rebellious colonies. Even recently the colonies of Spain had been in rebellion. Only a few years before, Louisiana, just across the river from the Americans, had been ablaze with revolutionary ideas, and had broken forth in open revolt. The rebellion had been sternly repressed; but what effect would the success of English insurgents have on the restless inhabitants

³Ossun to Vergennes, September 6, 1777. (*Esp.*, 587, no. 33, new 113.)

⁴Montmorin to Vergennes, January 28, 1778. (*Ibid.*, no. 9, new 58.)
Florida Blanca to Aranda, January 13. (*Ibid.*, no. 21.)

of Spanish America? King Charles, himself, feared that recognition of the new republic would set a dangerous example to his own possessions.⁵ Still another question was whether the American states would be more peaceful neighbors as dependencies of the British Empire or as an independent nation. Florida Blanca feared that if they became independent they would be animated by a spirit of aggression which would be dangerous for Spain. Between Great Britain and the Americans there was, he declared, "a sort of equality of enmity which makes it difficult to prefer either of them."⁶ If the colonists should succeed in their efforts, he expressed the hope that they be placed in dependence on the Bourbon crown and kept in a state of anarchy such as existed in Germany.⁷ It was in vain that Vergennes pointed out the danger of an increase of British strength in the New World; it was useless to plead that such was the constitution of the new republic that it would more likely fall a prey to internal quarrels than become a danger to its neighbors.⁸ Vergennes's arguments that there was a placid "inertia which is characteristic of all constitutional democracies" and which would inhibit the spirit of conquest did not convince the Spanish minister.

When Vergennes found he could not convince Florida Blanca of the advisability of war, he changed his tactics and began to try to push him by easy stages into taking a hostile attitude towards England. He offered the Spanish minister the use of ten vessels to protect Spanish commerce, but the offer was curtly refused.⁹ He offered to entrust Gerard with any mission which Florida Blanca

⁵Montmorin to Vergennes, March 30, 1779. (*Esp.*, 593, no. 68, new 25.)

⁶Montmorin to Vergennes, February 2, 1778. (*Ibid.*, 588, no. 80, new 11.)

⁷Montmorin to Vergennes, March 20, 1778. (*Ibid.*, no. 157, new 19.)

⁸Vergennes to Montmorin, April 3, 1778. (*Ibid.*, no. 4, new 27.)

⁹*Ibid.*, 588, no. 157; Wharton, *Dip. Cor.*, II, 491.

might wish him to perform in the United States.¹⁰ His efforts seemed to offer some prospect of success, when in April, 1778, after the Mexican fleet had arrived with all its treasure, the Spanish ministry became belligerent in speech.¹¹ Altho Florida Blanca expressed his defiance of Great Britain, he resisted all French overtures. To Montmorin's insinuations that France was not seeking any conquests from the war, he replied that Vergennes was acting not from motives of prudence but of hate.¹²

The vacillating policy of Florida Blanca convinced Vergennes that he must buy the help of Spain. He had already offered her Jamaica and the right of fishing off the banks of Newfoundland, and had suggested that the Americans would be glad to help conquer the Floridas.¹³ This offer did not satisfy Florida Blanca. He no longer seemed interested in these conquests, but began plotting for the recovery of Gibraltar, and placed that as an essential condition of Spain's participation in the war.¹⁴

Vergennes was not yet ready to concede so much; but he instructed Montmorin to find what else might be a favorite conquest for Spain.¹⁵ To this query Florida Blanca gave no satisfactory answer. Vergennes then informed the Spanish minister that D'Estaing's fleet was ready to cooperate with the Spanish forces in an effort to seize Jamaica, Pensacola, the control of the Gulf of Mexico, or the Newfoundland fisheries.¹⁶

In regard to the Newfoundland fisheries, Florida Blanca answered curtly that by the treaty of 1763 Spain

¹⁰Vergennes to Montmorin, March 27, 1778. (*Esp.*, 588, no. 173, new 26.)

¹¹Montmorin to Vergennes, April 30, 1778. (*Ibid.*, 589, no. 50, fol. 143.)

¹²Doniol, *Histoire*, II, 795.

¹³See pp. 74, 89.

¹⁴Montmorin to Vergennes, February 13, 1778. (*Esp.*, 588, no. 175, new 21.)

¹⁵Vergennes to Montmorin, April 10, 1778. (*Ibid.*, 589, no. 13, new 29.)

¹⁶*Ibid.*, 588, no. 173, new 26.

had renounced her pretensions to that region; and that she would not consider them again. As to the Floridas, he declared that the United States had offered them to the Catholic King two years before. He did not accept the offer of Vergennes to permit Gerard to look after the interests of Spain in America, because, he declared, Spain had nothing to contest with the United States, for the boundary between the two countries was marked by the Mississippi, which was definite enough. In short, Florida Blanca objected to everything France had done and disclaimed every offer France could make.¹⁷

Vergennes was bitterly disappointed at Spain's inactivity, and to disappointment was added alarm for fear that Great Britain might succeed in affecting a reconciliation with the insurgents. Reports had come to him that the British had offered the Americans full possession of the Floridas in return for a guarantee of their other provinces.¹⁸ He foresaw that such an offer would be like "une pomme de discorde" between Spain and the United States. He was willing for the British to keep Canada, but he

¹⁷"ce ministre me repondit que l'Espagne avoit renoncé par le traité de Paris de 1763 à ses prétensions sur Terre neuve qu'ainsi il n'y falloit plus penser. Sa réponse fut apeuprès la même lorsque je lui fis part des instructions de M. Gerard. Il me dit que l'Esp n'avoit pa rien a demêler avec les Americains, sur ceque lui répliquai que je croijois que les possessions d'Amèrique Meridonale pouvoient avoir quelques relations avec ceux qui étoient les maitres de l'Amerique Septentrionale, il me repondit que les limites etoient fixees par le Mississipi et que c'étoit une ligne de frontier assez décidée. Je parlai de la reocupation de la Floride qui ne pouvoit avoir lien qu au moyen d'une convention préalable avec les Etats-Unis de l'Amerique. il dit que cet objet avoit déjà été offert à l'Espagne il y avoit deux ans. En un mot M. le parti étoit pris dans cette première conversation de blamer tout ce qu'avoit fait la France de dedoigner toutes les offres qui pouvoient venir d'elle." Montmorin to Vergennes, April 10, 1778. (*Esp.*, 589, no. 15, new 23.)

¹⁸Frances to Vergennes, April 26, 1778. (*E. U.*, III, no. 103, fol. 224.) Frances was a secret agent of Vergennes in Paris. Vergennes was willing for the English to keep Canada, for this would forever bind the United States to France.

wished to make them surrender Halifax.¹⁹ To avoid the dangers of a reconciliation, Vergennes once more urged Florida Blanca to accept the American offer of the Floridas and recognize the new government before it was too late to reap the credit.²⁰

Florida Blanca declared once more in favor of peace. He felt there were too many difficulties in the way of conquering Gibraltar; while as to the Floridas, altho he felt that Spain ought to have them to keep the English out of the Gulf of Mexico, yet he would be content with the possession of Mobile and Pensacola. This much and even all the coast of Florida, he argued, should be granted his master without war. He was planning to mediate between the combatants and felt that, if he gave all Canada and perhaps other colonies to Great Britain that power would surely reward him handsomely.²¹

The policy of Florida Blanca was supported by Charles III, because that monarch sincerely desired peace. He felt also the danger to which his old time ally was exposing herself in the war with the British Empire, and strove his best to lead her back to peace. The efforts of Spain to effect a conciliation were encouraged by the British crown, which wished to keep that country neutral as long as possible; and it is by no means improbable that the first advances for mediation came at the suggestion of the court of London.²² The French had no confidence in the new Spanish diplomacy, but, in order to keep the good will of the court of Madrid, they felt it necessary to encourage the negotiations. Thus with both belligerents indicating their willingness for mediation, Florida Blanca made his first suggestions for a settlement on the basis of independence for the United States and some minor con-

¹⁹Vergennes to Montmorin, May 1, 1778. (*Ess.*, 589, no. 54, new 32.)

²⁰Consideration on the projects of Spain in case of war in America. In hand of Vergennes, June 20, 1778. (*Ibid.*, 589, no. 127, new 42.)

²¹Montmorin to Vergennes, June 22, 1778. (*Ibid.*, 589, no. 135, new 34, fol. 335.)

²²Doniol, *Histoire*, III, 473.

cessions for France.²³ So certain was Charles III that these conditions would receive the assent of Great Britain that he asked the French to keep their fleet at home until a truce could be declared;²⁴ but it was not long until fresh English aggressions on Spanish commerce convinced King Charles that his efforts were futile.²⁵

Vergennes had foreseen the failure of Spanish mediation and was prepared to make the most of it. At the first sign of British trifling, Montmorin came forward¹ with a demand for action, guaranteed by the terms of the *Pacte de Famille*, and intimated that an unfavorable response would mean the dissolution of the alliance.²⁶ Charles III was deeply wounded by the failure of his efforts, and severely disappointed at not receiving the Floridas, which he regarded as his due; and, while in this state of mind, he began to listen favorably to the pleadings of the French ambassador. Montmorin felt exultant at his success and wrote Vergennes that if France would guarantee Gibraltar and the Floridas, the alliance was secure.²⁷

The British were alarmed at the new drift of Spanish policy and at once revived the idea of mediation.²⁸ This time Charles was wary and insisted that he would not again offer his good offices unless the court of London formally requested him to do so. This the British government agreed to do,²⁹ and Charles decided to try again. Montmorin had previously declared that the British were merely trying to amuse Spain, and now he wrote that they had succeeded. Vergennes, on his part, agreed at once to the proposition of mediation; for he wished to maintain a character for

²³Montmorin to Vergennes, July 1, 1778. (*Esp.*, 590, no. 2, new 36.)

²⁴Doniol, *Histoire*, III, 472.

²⁵*Ibid.*, 509.

²⁶Vergennes to Montmorin, August 7, 1778 (*Esp.*, 590, no. 72, new 52); August 15 (*ibid.*, no. 87, new 53.)

²⁷*Ibid.*, no. 89, new 49.

²⁸Montmorin to Vergennes, August 31, 1778. (*Ibid.*, 590, no. 49, new 121.)

²⁹Doniol, *Histoire*, III, 513.

disinterestedness.³⁰ The French were soon convinced, however, that Charles III decidedly favored their views as to the terms of settlement, and that he would oppose leaving the British in possession of any important stronghold near the American possessions of the two crowns.³¹ With this assurance Vergennes was satisfied, and Spain entered upon her office of mediation.

At the request of Charles III Vergennes drew up a statement of the terms which he would insist upon as the necessary conditions of peace. The first requirement was the recognition of independence for the United States, with which must be included New York, Long Island, and Rhode Island, and such other parts of the original colonies as were in the hands of the British. France asked no colonies in North America, but declared her willingness to allow Great Britain to keep Canada, while the Floridas should go to Spain.³²

All these suggestions were agreeable to Florida Blanca. He particularly desired that the English should keep Canada. He argued that they were so enfeebled by the war that they would no longer be dangerous to the two crowns, while their possession of that country would prove a constant source of friction between them and the United States and keep the latter loyal to France and Spain.³³

In regard to the new republic, Vergennes did not hesitate to express himself clearly. "All my correspondence for several months," he wrote, "has proven to Florida

³⁰Vergennes to Montmorin. (*Esp.*, 590, no. 51, new 48.)

³¹Montmorin to Vergennes, September 29. (*Ibid.*, 590, no. 188, fol. 458.) Charles indicated that he would approve the chief French demands; the independence of the United States and the expulsion of the English from Dunkirk. Montmorin did not doubt that Spain would seek to get the British out of the way of their commerce but he thought she would leave them Canada.

³²Vergennes to Montmorin, October 8, 1778. (*Ibid.*, 591, no. 62.)

³³Montmorin to Vergennes, October 19, 1778 (*ibid.*, 591, no. 33, new 61); October 15 (*ibid.*, no. 22, new 60).

Blanca that we do not differ from him in principles. . . . We ask only independence for the thirteen states of America, without including any of the English possessions which have not taken part in the rebellion. We do not desire that a new republic shall arise which shall become the exclusive mistress of this immense continent." Such a case, he feared, would make the new republic a hard taskmaster for the other nations of the world. He agreed, too, that it was best to leave Canada in possession of the English to make the Americans perceive the necessity of having "des garants, des allees, et des protecteurs." The Floridas, or at least West Florida, Vergennes thought should go to Spain, as they were in no sense connected with the other provinces.³⁴

On this much, Spain and France agreed; but here the likeness ends. With France, independence for the United States was the prime condition of the war; with Spain, an extension of her empire was the chief aim. Vergennes regarded the United States as a friend and ally to

³⁴"Nous ne demandons l'indépendance que pour les treize Etats de l'Amerique que seront unis entre eux, sans y comprendre aucune des autres possessions angloises qui n'ont point participe a leur insurrection. Nous ne desirons pas a beaucoup près que la nouvelle Republique que s'eleve demeure maitresse exclusive de tout cet immense continent. Bientot suffisant seule a ses besoins, les autres nations seroient dans le cas de compter avec elle, parceque pouvant se passer de toutes, elle leur feroit tres certainement une loi tres dure. . . . Neanmoins, il n'en est pas moins interessant que les Anglois demeurent maitres du Canada et de la Nouvelle Ecosse, ils feront la jalousie de ce peuple, qui pourroit bien se retourner ailleurs et de lui faire sentir la necessité d'avoir des garants des allees, et des protecteurs. Quant au partage que M. le comte de floride blanche desiroit qui fut fait des Florides dont l'occidentale devroit revenir a l'Espagne, vous vous rappelerez M. quels ont ete notre vue et notre interet, et que ne pouvoit pas stipuler pour cette Couronne nous avons posé dans l'acte separe du traite d'alliance une preuve d'attente sur laquelle elle pourroit edifier un jour." Vergennes thought that the dominant spirit of the Americans was that of trade, and this, he thought, would be less dangerous to their neighbors. Vergennes to Montmorin, October 30, 1778. (*Esp.*, 591, no. 43, new 67; Circourt, III, 310; Doniol, *Histoire*, III, 561.)

be treated generously; Florida Blanca regarded them as a rival and enemy, to be restricted in boundaries and subject to the restraints of Spanish ambition. He preferred to leave the British in possession of New York or other strongholds from which they might annoy the American republic.³⁵

While Vergennes was willing that Canada should remain in British hands he would by no means consent to the Spanish demand that such a settlement should be guaranteed.³⁶ He favored rather the pushing northward of the American boundaries. On the question of allowing the British to keep some posts within the limits of the thirteen colonies he took a decided stand. "We can not think," he wrote, "of letting any of the states, either New York or Rhode Island, remain in dependence on Great Britain without contradicting our first principles;" and he firmly maintained that if this was not agreed to he would not make peace.³⁷

³⁵Florida Blanca declared that the question of these posts demanded much reflection. It would be difficult, he reasoned, to get the Americans to consent to such terms and "il fut persuadé que les Anglois n'en tireroient jamais aucune utilité, ces places devenant entre leurs mains a piu près ce que sont les presidés d'Afrique dans celles des Espagnoles." Montmorin to Vergennes, October 19, 1778. (*Esp.*, 591, no. 33, new 61.)

³⁶Florida Blanca insisted that such an arrangement should be made. Montmorin objected that with the English in possession of Halifax they could prey upon the commerce of the United States and threaten the possessions of the two crowns. He also feared that the United States would not consent to such an arrangement. The Spanish minister replied that after the war the English would be too feeble to be dangerous, and they would be still less so if they could arouse between them and the Americans some permanent sources of division. For this reason Canada and Acadia must be left to the British. As to the United States, he declared they had need of peace and must accept whatever was given them. Montmorin declared that he feared greatly the prosperity and progress of the Americans. Montmorin to Vergennes, October 19, 1778. (*Ibid.*)

³⁷"Il faudra renoncer a la paix, monsieur, si les Anglois mettoient pour condition qu'ils conserveroient New-York ou telle autre place ou territoire dependant des treize Provinces unies de l'Amerique." Vergennes to Montmorin, October 17, 1778 (*ibid.*, 591, no. 25, new 63; Circourt, III, 307); November 2, 1778 (*Esp.*, no. 68, fol. 118).

In spite of these differences Vergennes did not cease his efforts to involve Spain in the war. He ridiculed the idea that the United States would ever become dangerous as neighbors of Spain, and declared that the Spanish monarchy had much more to fear from the aggressions of Great Britain.³⁸ His efforts, however, were unavailing, and he decided to guarantee Canada and Nova Scotia to Great Britain and the Floridas to Spain.³⁹

Other causes were forcing Spain to the position of France. Great Britain had treated with contempt the offers of Charles III to mediate, even after she had made the first suggestion. Florida Blanca was convinced that the English were merely seeking to gain time, and that their intentions were hostile.⁴⁰ New reports arrived of British aggressions in America. In the Gulf of Honduras and the Bay of Campeche, they were becoming more insolent; and they were suspected of trying to incite an uprising in Louisiana.⁴¹ There was no prospect that Great Britain would surrender the Floridas, and the ever-increasing fleets that hung around Gibraltar was an added source of irritation.

The condition of France was becoming desperate. D'Estaing had suffered reverses in America and the insurgents were driven out of Rhode Island. The French treasury could with difficulty stand the strain and it was evident that something must be done at once. Vergennes de-

³⁸"C'est gratuitement qu'on voit dans ce peuple nouveau une race de conquérans." Vergennes to Montmorin, October 19, 1778. (Doniol, *Histoire*, III, 559.)

³⁹Vergennes sent sketch of proposed treaty to Spain, October 17, 1778. (*Esp.*, 591, no. 25, new 63.)

⁴⁰"M. de Florideblanche . . . pense comme vous que les Anglois ne cherchent qu'à gagner du tems et qu'il faut nous preparer ensemble a la guerre pour le prentems . . . Il est sans aucune confiance dans la negociation pour la paix . . ." Montmorin to Vergennes, November 12, 1778. (*Esp.*, 591, no. 52; Doniol, *Histoire*, III, 575.)

⁴¹Montmorin to Vergennes, November 4. (*Esp.*, 591, no. 54, new 67.)

cided that he must accept the Spanish conditions, for assistance was indispensable.⁴²

Altho Florida Blanca still feared war, he thought its dangers were no longer as great as were those of peace. He declared his willingness still to negotiate; but he said it must be on terms honorable to the two crowns.⁴³ He spoke of war with "la chaleur et l'espece d'enthousiasme" and Montmorin was convinced that there would be no further difficulty.⁴⁴

Altho Florida Blanca was expecting war, he wished to wring a few more concessions from his ally before committing himself. Vergennes had consented to assist the Spaniards to recover Gibraltar, Minorca, Jamaica, and Florida, and to help drive the English from Honduras and Campeche,⁴⁵ but this did not satisfy the minister of Charles III. He could ask no more gains in territory, so he turned his efforts to crippling the United States. News had arrived at Madrid in June, 1778, that the Americans had captured two British forts on the Mississippi and were threatening Florida.⁴⁶ This information doubtless increased the cupidity and jealousy of the Spanish court, for its tone became immediately more hostile to the Americans. Soon afterwards rumor credited the Americans with complete success in Florida,⁴⁷ and Vergennes again urged Florida Blanca to recognize the United States while there was yet an opportunity to reap some advantages. News

⁴²Vergennes to Montmorin, November 2. (*Esp.*, 591, no. 68, fol. 118.)

⁴³"Dans le courant du mois prochain nous verron clair si on veut nous amuser, ou si l'on desire réellement la paix. dans le second cas, il faut faire la paix, mais honorablement et utilement pour les deux Couronnes." Montmorin to Vergennes, on interview with Florida Blanca, "ses propres paroles," October 26, 1778. (*Ibid.*, 591, no. 52; Circourt, III, 309.)

⁴⁴En un mot, Monsieur, je suis convaincu que le mois prochain ne se passera pas sans nous ayons commencé à concerter le plan que nous executerons au printemps prochain." *Esp.*, 591, no. 52.

⁴⁵Vergennes to Montmorin, December 24, 1778. (*Ibid.*, 591, no. 154.)

⁴⁶Galvez reported this to the Spanish court. Montmorin to Vergennes, June 1, 1778. (*Ibid.*, 589, no. 98, new 30.)

⁴⁷Vergennes to Montmorin, July 6. (*Ibid.*, 590, no. 12, new 45.)

soon arrived, however, that the Americans were repulsed and had retreated to Louisiana. This confirmed the poor opinion which the Spaniards held of the insurgents, but placed them also in a difficult position with reference to the British court. Galvez refused to surrender the fugitives⁴⁸ and the English became threatening. They built a fort at Manchac on the Mississippi, which not only protected the Floridas but threatened New Orleans as well.⁴⁹

Vergennes pointed out the danger of the English movements, but Spain still held back. Florida Blanca was now thoroly alarmed, however, and resolved to get ready for war.⁵⁰ In spite of his hatred of the British, he declared that his master would never enter into an alliance with the Americans, nor even recognize them,⁵¹ for they were likely soon to become an enemy.⁵² Neither English nor Americans, he asserted, should come near Spanish territory, and he announced his determination to drive them both from the Mississippi Valley.⁵³

Altho Vergennes regarded the Spanish demands as "gigantesque," he agreed to all of them except the proposal to give to Spain the Mississippi Valley. He said nothing to Florida Blanca of the West, but to Gerard he

⁴⁸Montmorin to Vergennes, July 6. (*Esp.*, no. 14, new 38.)

⁴⁹Vergennes wrote of this: "suivant les renseignements qu'on me donne il a le double objet de couvrir la Floride Occidentale et de chasser les Espagnoles de la droite de cette riviere en cas de guerre." July 17. (*Ibid.*, 590, no. 36, new 47.) Aranda pointed out the same danger to his court, July 20. (*Ibid.*, no. 45.)

⁵⁰Montmorin to Vergennes, November 29. (*Ibid.*, 591, no. 72, new 67.)

⁵¹Florida Blanca declared that Charles III could never extend recognition to rebels. Montmorin to Vergennes, August 17, 1778. (*Ibid.*, 590, no. 89, new 49.)

⁵²Same to same, November 12. (*Ibid.*, no. 70.)

⁵³*Ibid.* "M. de Floride-Blanche veut reprendre la Floride: il veut chasser les Anglois et les Americains des deux rives du Mississipi." Same to same, November 20. (*Ibid.*, new 72; Doniol, *Histoire*, III, 585.)

expressed his astonishment at Spanish greediness.⁵⁴ Vergennes also insisted that the prime object of the war should be the independence of the United States, and to this the Court of Madrid refused to give its assent. Florida Blanca argued that such a clause in their agreement was out of place and useless; out of place because Spain could make her own arrangements with the United States, and useless because the independence of that country was the first and only cause of the war.⁵⁵

The discussion of a convention between the two countries dragged on during the early months of 1779. Florida Blanca, in rejecting the plan submitted by Vergennes, promised to draw up one himself, but had offered excuse after excuse for delay. He complained that the Americans were not aggressive enough in conducting the war. He feared that they would seek to annex Canada, and it was desirable that this province should remain in English hands. To all these objections Vergennes returned the strongest assurances of his willingness to meet the desires of Spain and declared that his minister to Congress would labor to deter the Americans from an invasion of Canada and would urge them to a more vigorous policy against Great Britain.⁵⁶ Florida Blanca objected that France was less anxious for the advantages of Spain than for the independence of the United States. Vergennes had declared that this independence was the prime object of the war, but in order to satisfy Spanish pride he offered to express the two clauses in the same terms.⁵⁷ Spain still dallied with

⁵⁴Regarding the demand of the United States for the right to navigate the Mississippi and the objections of Spain, Vergennes wrote: "et je vous assure qu'il me parôitroit étonnant qu'on refusât à cette demande." October 26, 1778. (*E. U.*, V, no. 43, fol. 119.)

⁵⁵Vergennes proposed a convention, article 4 of which declared that war should continue until the independence of the United States was secured. (*Esp.*, 592, no. 105.) Florida Blanca complained because independence was made more definite than the other objects of the war. Montmorin to Vergennes, February 28, 1779. (*Ibid.*, no. 140, new 14.)

⁵⁶Vergennes to Florida Blanca, March 18, 1779. (*Ibid.*, 593, no. 33, fol. 81.)

⁵⁷Doniol, *Histoire*, III, 634.

the terms of the convention and the attitude of Vergennes became daily more importunate. He wrote letter after letter to Montmorin explaining the pressing needs of France and the necessity of immediate aid from Spain.⁵⁸

To the offer of Vergennes to express in the same terms the articles on the advantages to be given Spain and that on the independence of the United States, Spain interposed another objection. Florida Blanca insisted that Spain could never recognize the independence of the American republic until England had done so, for fear that such recognition would set a bad example to the Spanish colonies in America. He declared he could go no farther than to give secret aid to Congress.⁵⁹

To this argument Montmorin replied that the recognition of independence would not be so bad an example as the giving of secret aid. The manœuvres of Spain aroused in the mind of Vergennes the greatest indignation, and he wrote bitterly of a "minister who most often puts caprice in place of reason." He likewise denounced the objections of Spain to recognize the independence of the United States. "Nothing is gratuitous on the part of Spain," he wrote. "We know that she wants concessions from the Americans, as well as from us." He did not oppose this, but he regarded it as absurd that France should guarantee possessions to a nation so powerful as Spain. He vigorously declared that France would not lower her honor or dignity by entering into a convention nullifying the treaty of February, 1778, and that if Spain joined France she must do so with that understanding.⁶⁰

Spain had exhausted her objections to the alliance and finally in April began to formulate her demands. Her first proposition was that the two powers should agree not to lay down arms until the English had surrendered Gibraltar. All other conquests, however, were to be subject

⁵⁸Doniol, *Histoire*, III, 634.

⁵⁹Montmorin to Vergennes, March 30, 1779. (*Esp.*, 593, no. 68, new 25, fol. 157.)

⁶⁰*Esp.*, 593, no. 41. Doniol, *Histoire*, III, 672.

to the fortunes of war. This project did not definitely recognize the independence of the United States, but made it a subject of negotiation (Art. 4). Article five granted the same advantages to France as had the convention previously submitted by Vergennes. It provided for the abolition of the articles of the peace of Utrecht, restricting France from fortifying Dunkirk and such other places as she wished to fortify; the expulsion of the English from Newfoundland, the possession of St. Domingo, and Senegal, besides various commercial advantages. Article seven proposed for Spain the recovery of Gibraltar, the possession of Mobile and the restitution of Pensacola and the coast of Florida along the "Bahama Canal" so that no foreign power could get any foothold there, the expulsion of the English from Honduras and Campeche, and the restitution of the isle of Minorea.⁶¹

In the discussion of this convention Montmorin expressed his surprise at Spain's demand for the restitution of Minorea, for before this she had apparently attached little importance to it. Florida Blanca replied to his objections that this acquisition would be of little importance if the others were granted. To the extent of the coast of Florida desired by Spain Montmorin objected. Before this Florida Blanca had asked only for Mobile and Pensacola, but now he desired all the shore around the south end of the peninsula and some distance up the east coast. The Spanish minister, however, insisted that all this was essential to assure the navigation of the Gulf of Mexico.⁶² From the negotiations preceding this convention Montmorin decided that it did not seriously sacrifice the interests of France and accepted Florida Blanca's suggestion that they sign at once.

⁶¹Montmorin to Vergennes, March 30, 1779. (*Esp.*, 593, no. 68, new 25, fol. 157.) Text of this convention in Doniol, *Transcripts, Nou. Acq. Francs.*, 6488, 189; Doniol, *Histoire*, III, 893.

⁶²Montmorin to Vergennes, April 13, 1779. (*Esp.*, 593, no. 112, new 31, fol. 255.)

The articles relating to America did not contradict the previous understanding as to the settlement of affairs in the New World. Congress had already offered Spain the Floridas and could not object to the article in the convention regarding them. There was nothing in the convention to imply Spanish control over the Mississippi river and valley, and no limitations on the boundaries of the United States. The provision that France should not lay down arms until the restitution of Gibraltar was secured has been most criticized⁶³ on the ground that it bound the United States to continue a war in the interests of Spain. The treaty between the United States and France provided that neither power should make peace until independence was secured, and no treaty was to be signed without the consent of both nations. There is no evidence that France ever sought to use this clause to further her own or Spain's ambitions, and she never held the United States bound to help regain Gibraltar. Nor did the Americans have the means to aid in such a project, as they could act only on the defensive and with the expulsion of the English they could do nothing more.

France herself received no adequate compensation for the concessions she made to secure the alliance of Spain. The right to fortify Dunkirk was no equivalent for the guarantee of Gibraltar, and the other promises that the crowns made to each other bore almost the same degree of relative importance. Vergennes, however, approved the signing of the convention, and looked eagerly forward to the time when the French navy, reinforced by that of Spain, should sweep the English from the seas. Florida Blanca began hostilities at once, and commenced with vigor the first campaign, which he believed would end the struggle. Across the Atlantic the new republic was striving not only for independence from Great Britain, but was also laboring to protect its integrity from the grasping ambition of Spain.

⁶³Bancroft, *United States*, V, 308; Van Tyne, *American Revolution*, 312.

CHAPTER VI

DEVELOPMENT OF A CONGRESSIONAL POLICY TOWARD THE WEST.

News of the signing of the treaty of alliance with France produced throughout the United States a feeling of joy and hope. There were some who objected to receiving aid from the ancient enemy of the English race, but there was almost universal expression of satisfaction. The intervention of France, however, was to prove the source of a new anxiety to patriotic Americans. It meant that Congress must work out a policy in regard to the disposition of the West. What should be the western boundaries of the new nation? Should it have the right freely to navigate the Mississippi River? These questions were closely connected and presented themselves together. Great Britain and Spain as well as the United States had interests there. Within Congress there were hostile factions, each with a very definite view of the question; and upon these factions the adroit and ingratiating Gerard played with varying success.

Gerard had definite instructions regarding Canada and the Floridas; but he had not been given a line as to what attitude France would take respecting the ownership of Eastern Louisiana or the navigation of the Mississippi River. He could only act upon his instructions to look after the interests of Spain. If that country would be benefited by the complete control of the Mississippi Valley, Gerard might well argue that he should work to this end. On the other hand, he was to do nothing to incur the ill will of Congress, and so he could not feel at liberty freely to oppose the designs of the Americans towards the West.

Thus Gerard felt compelled to play a double game. When Miralles proposed the extension of Spanish power

over the West, he opposed it as unreasonable, and declared that Congress would never consent to such an arrangement; but to his own court he suggested that if Spain would seize the course of the Mississippi below the mouth of the Ohio, the negotiations would be much simplified.¹

The scheme of Miralles was based on the idea of restricting the territory of the United States and thus making them dependent on the good will of the two crowns. He considered the Americans as dangerous as the British, and believed they would show their hostility at the first opportunity.² Gerard assured his friend of the good disposition of the Americans and suggested to Congress that, in order to reassure Spain, it should pass a resolution declaring an enemy of the Confederation any state which should seek to extend its borders beyond "certain limits."³ Gerard informed Morris, the secretary of Congress for foreign affairs, that Spain was afraid of the great numbers of English who had established themselves on the Mississippi, and also of the Indians who had been driven westward by the Americans. They were a serious menace, he declared, to the Spanish frontier, and a cause of constant jealousy, while the designs of Congress upon the Floridas had

¹*E. U.*, V, 35.

²Miralles proposed to Gerard that France should seize Canada and Spain should have the West and the Floridas. He gave as his reasons that the United States would soon become the enemies of Spain. Gerard opposed his opinions on this score, but declared that Congress never would consent to the Spanish terms. He pointed out the American expeditions to the West, and advised Miralles that if he hoped to realize his ambitions he must not place the Americans in a position to formulate their demands. Gerard to Vergennes, July 20, 1778. (*Ibid.*, IV, no. 41, fol. 97.)

³Gerard stated that several members of Congress approved this suggestion and that one offered to make a motion to that effect. He expressed high opinions of the fairness and justice of Congress, and of its desire to satisfy Spain. Same to same, September 11. (*Ibid.*, no. 114, fols. 311-316.)

aroused in the Spanish court great anxiety and alarm.⁴ He suggested that Congress should give some guarantee to Spain of its moderation, and should formally renounce in her favor St. Augustine, Mobile and Pensacola, together with the navigation of the Mississippi.

Gerard was gradually led to this position by the urgency of Miralles and the indifference of Morris. There was nothing in the instructions of Vergennes to warrant such a stand, but the American secretary was willing to agree to the full demands of the Spanish court. Morris admitted that the anxiety of Spain was founded on reason as far as some sections of the country were concerned, but asserted that there were no grounds to fear the Confederation as a whole. He confided that he and several of his colleagues were impressed with the necessity of establishing a law of *concendo imperio* which would prevent any additions to the states already in the union. If Spain had the exclusive navigation of the Mississippi, he argued, the immense population which would form along that river and the Great Lakes could more easily be held in subjection to the East. On the other hand, if this population should hold control of the Mississippi and the St. Lawrence, he expressed the belief that it would soon dominate both the United States and Spain. As for the Floridas, Morris declared that Congress would cede them to Spain for a money compensation; for he urged that there was also great danger of southern aggression. In Canada, however, he showed great interest, and used every effort to get France to assist in its conquest.⁵

⁴Gerard carefully refrained from admitting any knowledge of the wishes of Spain and claimed to speak only from general conditions. He thought that Spain had good reason to fear the American spirit of adventure, and pointed out the dangers to Spain of the American western policy. Gerard to Vergennes, October 20. (*E. U.*, V. no. 33, fols. 68-84.)

⁵Gerard to Vergennes. (*Ibid.*) Morris urged that unless the English were driven out of Canada the French could never hope to have any share in the fisheries, and he offered to help put Newfoundland into French hands. He declared that with Canada in British hands the United States must remain dependent on the British Empire.

Gerard objected to Morris that there were many Americans who insisted upon the right to navigate the Mississippi, and suggested that there might be many difficulties in turning it over to Spain. To this the secretary for foreign affairs replied, that those who held to such demands were actuated by their financial interests, and that if the matter were presented in its true light to Congress he could hope for much. It is noteworthy that in all this discussion Gerard did not once suggest that Spain should be given Eastern Louisiana. Against the wishes of the Spanish court and without any support from the Americans he was willing to leave this territory to the new republic. But with the consent of Congress, Spain should have the Floridas and the exclusive navigation of the Mississippi River.

Until the fall of 1778 Vergennes had taken no position regarding the West. He admitted that he did not understand the question. His attitude towards the United States was not illiberal. When he heard of the Spanish claims to the exclusive navigation of the Mississippi he expressed his surprise. He left the decision as to the attitude of France in this dispute to Gerard, who should understand the claims of both parties. If it appeared to the latter that Spain could justly maintain her pretention, he was to win over Congress; but if it appeared that the Americans had the right to navigate the river, he was to urge their claim on the court of Madrid.⁶

Vergennes expressed no objections to the American possession of the West, but protested against any project

⁶"je veux parler de la navigation du Mississipi; . . . je juge par la situation des lieux que les Americains insisteront sur la liberté de la navigation du Mississipi à cause des établissements qu'ils propose de former sur l'Ohio, et je vous assure qu'il me paroîtroit étonnant qu'on refusât à cette demande. Cependant il peut y avoir pour la negative des considerations locales que j'ignore et peuvent meriter quel qu'attention . . ." Vergennes to Gerard, October 26. (*E. U.*, V, no. 43, fol. 105; Doniol, *Histoire*, III, 569.)

of giving Spain anything except the Floridas.⁷ When he received Gerard's account of his negotiations with Morris, he gave his approval of the action of the French representative. He believed that the United States never should and never would undertake any conquests, and he urged Gerard to persuade Congress that it was not for the interest of the republic to extend its possessions. Any aggression, he declared, would arouse jealousies and would forfeit the protection of the powers, who alone could guarantee to the United States their political existence.⁸ The chief end of the war, he contended, was American independence; and when that was attained the question of territories could easily be decided.⁹

Gerard sought to carry out the instructions of his master. He urged Congress to pacific measures toward Spain, and begged it to renounce all idea of conquest except such as it could make from the English, and to be content with the territory it already had.¹⁰ Between Spain and the United States he urged that there should be an established line of separation. He declared that all Europe was suspicious of the new nation, and urged Congress to make clear its pacific intention. His efforts were not in vain, for several members of Congress agreed with him, and

⁷"Cet agent [Miralles] croit qu'il seroit d'une bonne politique que nous serassions les colonies par le Nord tandis que l'Espagne les serreroit par le Sud. Vous savez que nous sommes d'une opinion contraire. . . ." (*E. U.*, V, no. 43, fol. 105.)

⁸Vergennes to Gerard, November 18. (*Ibid.*, V, no. 78, fol. 179.)

⁹"le seul point qui importe aux Etats-Unis c'est de faire reconnoître leur indépendance par la Grande Bretagne." October 26. (*Ibid.*, no. 43, fol. 105.)

¹⁰"qu'il me sembloit en general qu'il convenoit qu'ils se hatassent de fixer d'une maniere positive et authentique aux yeux de tout l'univers le caractère paisible qui doit être inherent à une republique telle que la leur; qu'en marquent un desir permanent de la paix et une résolution arrêtée de renoncer a toute conquête et de se contenter de leur territoire et des conquêtes qu'ils pourroient faire sur les Anglois." Gerard to Vergennes, December 12. (*Ibid.*, V, no. 46, fols. 301-316.)

some even declared that their country was already too large to be well governed.¹¹

While the discussion of the disposition of the West was being carried on, the Americans were trying to make good their rights by force of arms. Already they had established themselves in Kentucky and Tennessee, while the British were confined to a few posts along the Great Lakes and some of the rivers of the Northwest.¹² So strong were the Americans that they were able to repulse a number of raids led by the British into this country and to bid defiance to any attempts to conquer them.

In the Southwest Galvez, the Spanish governor of New Orleans, had been from the first a friend to America and an enemy to Great Britain. He allowed Captain Willing of Philadelphia to establish military headquarters in New Orleans, where he could fit out expeditions, recruit men and issue seditious proclamations to the English settlers in Florida and along the Mississippi. Galvez openly furnished ships to carry supplies up the Mississippi, and aided all sorts of plans against the British in the West.¹³ He even furnished money and supplies to Willing for an expedition against Mobile.¹⁴

The expedition of Major Willing against the Floridas attracted much attention. Galvez wrote in glowing terms of the bravery and success of the Americans. Gerard reported the undertaking less favorably as led "by a young fool, who in a commercial expedition has drawn the English from a great part of the Mississippi."¹⁵ In Europe,

¹¹"Le President et un delegué de Virginie convenrent de la justesse de mes remarques, et que leur empire etoit deja trop grande, pour esperer qu'il put etre bien gouverné." Gerard to Vergennes, December 22. (*E. U.*, V, no. 47, fol. 349.) Account of interview with a committee of Congress.

¹²Van Tyne, *American Revolution*, 280.

¹³For accounts of the activities of Galvez see memorials in Public Record Office. (*C. O.*, 5, vol. 117.) See also relation of Pollock to Congress. (*Papers of the Continental Congress*, no. 50, fol. 1 *et seq.*)

¹⁴Montmorin to Vergennes. (*Esp.*, 588, no. 98, new 30, fol. 248.)

¹⁵Gerard to Vergennes, July 16. (*E. U.*, IV, no. 23, fols. 97-102.)

also, the move aroused much speculation. Vergennes was much alarmed for fear that this invasion would cause trouble between the United States and Spain. The expedition, however, accomplished nothing and it was left to Galvez to conquer the Floridas.

Of more vital importance was the expedition of George Rogers Clark sent out in 1778, largely through the support of Virginia. He captured a number of posts in the Northwest and gave the United States a real basis on which to maintain their rights to this country. Gerard wrote that the "success of Colonel Querk in the country of the Illinois presents the Americans with a new *apas*."¹⁶ Great interest was aroused in America and Europe alike by this attempt to get possession of the West. In Europe it was reported that a great body of Americans had driven the English out of Illinois.¹⁷ The British still held Detroit and the Great Lakes; but the region south of it was clear and the best title to it rested with the United States.

With the success of Clark in the West, there developed a new interest in Congress for its preservation to the republic. At an interview between Gerard and a committee of Congress in December, 1778, the whole situation was again gone over. Gerard declared that he succeeded in convincing Jay and a delegate from Virginia of the wisdom of renouncing all conquests, whereupon the member from New York became angry.¹⁸ This was the beginning

¹⁶Gerard wrote to Vergennes that Virginia and South Carolina cared nothing for the conquest of the Floridas. "Ces états," he continued, "aiment mieux diriger l'emploi de leur forces contre ce qu'on appelle *Backountries*. Les succès du Major Querk dans le Pays des Illinois leur présentent un nouvel *apas*. On croit que les Anglois sont totalement chassés des rives de l'Ohio et du Mississipi." December 19, (*E. U.*, V, no. 47, fols. 349-358.)

¹⁷*Arc. Nat. C.*, 13; *Colonies, Correspondance General*, nos. 14-16.

¹⁸Gerard to Vergennes, December 22. (*E. U.*, no. 47, fol. 349.) It is not improbable that R. H. Lee was the Virginia member of this committee, for he held views at that time very similar to those described by Gerard. See his letter to Patrick Henry, November 15, 1778. (*Letters of R. H. Lee*, I, 452.)

of a long series of bitter disputes between Gerard and some members of Congress which was to lead to the failure of all his schemes regarding the West.

Gerard soon came to the realization that there were many influential men interested in the Mississippi Valley, and he saw that the question must be handled carefully. The western interests, he wrote, were centered in three regions, the Illinois and two great projects for the settlement of the Ohio, and all these, he thought, would unite at the first suggestion of giving up any part of the West.¹⁹ Against this party Gerard held control of the committee of foreign affairs, which was instructed to do nothing without his advice.²⁰

The party opposed to Gerard increased greatly in strength, but the French minister still thought he had a majority of Congress with him. The "anti-Gallicans" declared that the right to navigate the Mississippi was indispensable to the development of the West, and maintained that there were involved the interests not only of the people of the Illinois, but those in the Southwest as well. These people formed a part of the American nation, they argued, and must not be abandoned.²¹ Thus was the issue squarely drawn. Gerard had urged Miralles not to give the Americans an opportunity to formulate their demands; but in spite of his cunning they had now declared their right to the whole West. With this party the French minister at once came into conflict.

¹⁹"les propriétaires des Terres des Illinois et de deux établissements immenses projetés et commencés sur l'Ohio n'épargneroient rien pour y susciter des obstacles, et ils auroient bien des moyens pour former un parti puissant." December 22. (*E. U.*, V, no. 47, fol. 349.)

²⁰Gerard to Vergennes, January 28, 1779. (*Ibid.*, VII, no. 52, fols. 129-135.)

²¹"d'autres croient que la conservation de la navigation du Mississipi est absolument indispensable. Ces. . . . se fondent sur les intérêts de la population qui s'est établie sur l'Ohio vers la rivière des Illinois dans le Pays des Natchez dans la floride occidentale, ils disent qu'ils ne peuvent abandonner leurs compatriots qui se sont formés en corps de nation et qui demandent à être admis à la confédération américaine." Gerard to Vergennes, January 28, 1779. (*Ibid.*)

Gerard had never before suggested to the Americans that they should give up their claims to the Mississippi Valley. To Morris he had talked only of the navigation of the Mississippi River. He wished to look after the interests of Spain, and when he found the Americans so yielding he naturally concluded that they would surrender their whole title to the West. To Congress he now declared that this territory no more belonged to the United States than to Spain if that country should wish to conquer it. The rightful boundaries of the United States, he argued, were those they had possessed as colonies, and the proclamation of 1763 and the Quebec Act had forever deprived them of the West. The pretensions of Congress, he insisted, were contrary to the spirit of the alliance with France, whose king would not prolong the war a single day in order to maintain them. Such a course, he urged, would also incur the enmity of Spain, so that when the time for peace came they would find themselves crushed between British hatred and Spanish jealousy. The honor and interests of the United States, he added, were opposed to conquest. "Already your territory is unwieldy," he insinuated, "and how much more so will it become by this enormous addition of dominion."²²

Gerard was not prepared, however, to fight for the claims of Spain. Altho his conduct thus far had received the approval of Vergennes, the foreign minister

²²" . . . j'ai ajouté que les Etats-Unis n'avoient aucune sorte de droit sur les possessions du Roi d'Angleterre qui n'appartient également au Roi d'Espagne, quand il seroit en guerre avec l'angre. Que leur droit se bornoit au Territoire qu'ils possedoient comme Colonies Angloises." He continued that the United States had claimed to be thirteen states "et fondée [a nation] sur les moyens les plus légitimes, et que rien ne seroit plus dangereux pour leur honneur leur consideration la constance de leurs principes et la confiance dans leur bonne foi, qu'ils se sont envisages euxmêmes comme une république commerçante qui ne pourroit pas même conserver une armee permanente; qu'ils eprouent déjà combien l'étendue de leur territoire rendoit une administration utile et active difficile a etabli." Gerard to Vergennes, January 28. (*E. U.*, VII, no. 52.)

had shown no desire to support the extreme demands of Spain for possession of the West. Vergennes had never opposed the claims of the Americans to this territory, but had condemned the Spanish pretensions as "monstrous."²³ He had expressed his acceptance of all the Spanish demands, however, except their claim to control the Mississippi Valley. He had also instructed Gerard not to oppose the American demands. Under these circumstances the minister to the United States could not go to extremities, and began to conciliate. He urged that it would not be well to make of Canada a fourteenth state, but suggested that much might be expected of the generosity of the King of Spain if he were conceded Florida.

The propositions of Gerard drew more closely party lines in Congress. His friends were at first better organized and he felt that his policy would triumph. He was definitely promised the Floridas for Spain and thought he would soon win the West.²⁴ He believed that he had seized the critical moment, when the party of expansion was weakest, to deprive the United States of lands which they regarded "as the patrimony for their overflowing population." He was sure that the Americans must yield because of their desire for peace and their despair of making further conquests.²⁵

²³Vergennes stood for the idea of giving the Floridas to Spain and allowing Great Britain to keep Canada. See p. 98. Altho he might include in Canada much of the old Northwest still the implication would be that he conceded the West to Congress. He had spoken without complaint of the American occupation of the Ohio and Illinois regions, but had opposed the claims of Spain.

²⁴Gerard reported that he had good information that the committee of foreign affairs would cede the Floridas to Spain if the Americans conquered them and would renounce all pretensions that could give offense to that crown. Gerard to Vergennes, January 29. (*E. U.*, VII, no. 533, fol. 136.)

²⁵"Peut-être l'esperance de la paix et le desespoir de faire aucune conquête rendra les Americains moins difficiles sur cet objet." Gerard to Vergennes, February 15. (*Ibid.*, no. 89, fols. 215-219.)

Altho Gerard doubtless had a strong following, the anti-Gallican party was rapidly organizing. It not only insisted upon possession of the West and the freedom of the Mississippi, but began to agitate for an extension of the northern frontier.²⁶ They showed also considerable hostility to Spain and Gerard had a new cause of worry. He tried to get them to suspend discussion of the northern boundary, and demanded renewed assurances that Spain should have the Floridas.

Altho checked for a time, Gerard did not give up his policy. To the members of Congress he maintained that the court of Madrid should be conciliated and its friendship sought. He disclaimed any intention to push the interests of Spain, and declared that he sought only her alliance. That nation was content with her possessions, he affirmed, but she might take a more friendly attitude towards the American cause if Congress would offer the possession of Pensacola and the exclusive navigation of the Mississippi. On the north he argued that the British held Canada so firmly that they could be dislodged only after a "most fortunate war." For this reason he urged that Congress should be willing to make peace without seeking any additions of territory. France, he said, desired nothing but the independence of the United States, and asked only that her ally should work to this end.²⁷

The words of Gerard produced different effects on the different members of Congress. Most of them were willing to surrender all claims to Pensacola but the proposition to give Spain the exclusive navigation of the Mississippi aroused much angry discussion. Gerard skilfully built up his party once more to the acceptance of his views. He worked shrewdly on the jealousies of the eastern delegates to secure their aid and even made an impression on

²⁶La difficulté la plus réelle et la plus fâcheuse que les Américains pourroient élever seroit celle qui regarderoit les limites de leur territoire vis-a-vis de l'Angre." (*E. U.*, VII, no. 89, fols. 215-219.)

²⁷Gerard to Vergennes, February 17 (*ibid.*, VII, no. 98, fol. 233); February 18 (*ibid.*, no. 100, fol. 244).

those from the south. Some of the Virginia and North Carolina members admitted their fear that the West was being rapidly settled by a lawless class which would prove dangerous to the older governments. These people would become equally hostile to the Spanish power, they agreed, and some way must be devised to restrain them. To accomplish this they were willing to hand over to the court of Madrid complete control of the navigation of the Mississippi and of the Gulf of Mexico. Some of the Gerard party, however, contended for a depot or place of deposit at the mouth of the river,²⁸ altho they sought first of all the alliance of Spain.

On the question of pushing the northern boundary further into Canada Gerard took a decided stand. Washington had declared the conquest of Canada impracticable; and the French minister felt he could urge the same. Accordingly he asked Congress once more to renounce all pretensions to this territory. It has not been in rebellion, he argued, and has no claim to help. This is not a war of conquest, but only to attain independence for the United States; and when this is accomplished, we are ready to make peace.²⁹

Gerard soon felt that his policy was again in the open and he prepared to make the most of his opportunities. He was sure of the Floridas and felt convinced that he could get the control of the Mississippi for Spain, provided the western settlements were conceded a port on the Gulf. Spain, however, was expected to reward this concession with a large sum of money.³⁰

The projects of Gerard furnished the issue for a great battle in Congress. On one side were the New Englanders who insisted on the acquisition of Nova Scotia and the

²⁸Gerard to Vergennes. (*E. U.*, VII, no. 98, fol. 233; no. 100, fol. 244.)

²⁹*Ibid.*

³⁰Gerard to Vergennes, March 1. (*Ibid.*, VII, no. 123, fol. 244.)

fisheries necessary for their prosperity and safety.³¹ On the other side was the southern and western party which gave preeminence to the question of the navigation of the Mississippi and American influence in the West. Gerard was the center of all controversy and his house became the committee room of Congress. Here came his partisans to discuss the situation and to fortify themselves with arguments. Here came the opponents of his policy to argue with him and to present the claims of their country. Among the former Gerard lists Gouveneur Morris and John Jay. His most determined foes were the Adams family and the Lees. These two families had formed a sort of alliance termed the "Junto", and they were untiring in their opposition to the measures of France. Gerard declared that the purpose of the opposition was to maintain the war until the British could send a new commission which they thought would offer liberal terms of peace.³²

A special commission of five appointed by Congress to consider the foreign affairs of the country reported on February 23. It urged that Canada should be restricted to the boundaries contended for by Great Britain in the Seven Years War, which meant that the United States should control the Great Lakes on the north and extend westward to the Mississippi. The southern boundary it placed as the northern line of Florida. The committee also maintained the right to the free navigation of the

³¹"Les 4 Etats de la nouvelle Angre ont fortement représenté la nécessité de cette stipulation." *E. U.*, VII, no. 123, fol. 244. After March 1, Gerard could not count so strongly on the help of a party, but he depended more on a sort of personal following which he was building up, particularly among the smaller states. Jenifer of Maryland was the most important of these men.

³²The position of many members of Congress is very puzzling. Lee favored the ideas of Gerard toward the West during the fall of 1778 (see p. 119). The next spring he led the opposition. Jay was counted as a friend of the Spanish policy. His later opinions are well known. Gerard declared that Samuel Adams wished to continue the war to save his importance, and that that was the purpose of his coalition with the Lees. March 4. (*Ibid.*, VII, no. 133, fol. 328.)

Mississippi and to the fisheries of Newfoundland. It recommended the conquest of the Floridas which should be sold to Spain and also the occupation of Nova Scotia. The discussion of this report occupied many days,³³ and from the despatches of Gerard we get an idea of the bitterness aroused. The report of the committee embodies two sets of ideas; those of the East and those of the South. The party of the East looked for an extension of boundaries far into Canada, with the conquest of Nova Scotia and the freedom of the Newfoundland fisheries. The party of the South held to the possession of the Mississippi Valley with the freedom to navigate that river. Gerard opposed the efforts of both. He conferred with one of his friends in Congress, and they agreed that a simple and fair arrangement for the western boundary would be to take the line marked off by the proclamation of 1763.³⁴

The plan of Gerard received no serious consideration from Congress. The debates, however, covered a wide range of matter. In them the whole history of British colonization and diplomacy was gone over. The trend of the discussion soon convinced Gerard that the claim to Nova Scotia would be abandoned, but the question of the northwest boundary was more difficult to settle. The advocates of expansion justified the claim to the Northwest Territory, not only on historical grounds but likewise on

³³This committee represented well the different sections of the country: it included S. Adams of Massachusetts, G. Morris of New York, Witherspoon of New Jersey, Smith of Virginia, and Burke of North Carolina. In its report it urged the interests of every section and thus threw the whole question into Congress. *Journals of Continental Congress* (Ford ed.), XIII, 241-243.

³⁴"L'un des délégués m'a montré le plan qu'il a rédigé pour les [limites] fixer Quoique cette matière ne me soit pas assez connue dans ses détails pour fixer mon jugement ce plan a beaucoup soulagé l'aprehension où j'étois que quelque grand Propriétaire du Sud ne se chargêât de ce travail. On propose de déterminer ces limites en prenant le Traité de Paris d'une main et l'autre la Proclamation [of 1763] cette méthode m'a paru simple et facile et je n'ai pû m'empêcher d'y applaudir." Gerard to Vergennes, March 3. (*E. U.*, VII, no. 67, fol. 131.)

grounds of conquest and occupation. They further contended that the surrender of this region would mean the acknowledgment of the validity of the Quebec Act, which was one of the causes of the Revolution.

The debates on the question of the boundaries and the navigation of the Mississippi continued from the 1st of March to the 19th. On the question of the Mississippi important interests in the West and South united to demand the right of navigation. Those interested in the Northwest Territory pictured the great advantages to the South of controlling the trade of this region. If our people do not get this trade, they argued, the English will get it, and thus become powerful in a region where it is to the interest of both Spain and the United States to keep them out.³⁵

So powerful did the opposition to giving up the Mississippi become that Gerard felt it necessary to interfere. Through one of his partisans he learned that the western party proposed to treat directly with the British crown for the navigation of the Mississippi. Gerard protested vigorously against this scheme as vicious and dangerous in its purpose and unjust in its tendencies and declared that Congress acted as if it wished to dictate first to Spain, then to Great Britain. He remarked that Spain had no contract with the United States and was under no obligation to them, and that the Spanish king would never consent to surrender his rights over the Mississippi, and on this question the king of France would probably take his part. He observed that it seemed strange that Congress should think of treating with England to despoil Spain and that it appeared that America would soon be at war with the Spanish monarchy.³⁶ This interview with Gerard was skillfully used by his friends, who believed that they had a majority against the proposition. They desired, however, to win over the important state of Virginia. They

³⁵Gerard to Vergennes, March 8. (*E. U.*, no. 135, fol. 339.)

³⁶*Ibid.*

expected to bring the question to a vote on March 11, but in the meantime the delegates from South Carolina were recalled and some time was necessary to rebuild their majority.³⁷ The final vote on the question of making the right to navigate the Mississippi an ultimatum was taken on March 24. Only one state favored the motion. Two were divided and the others voted no.³⁸

The debate on the boundaries was milder and there was from the beginning greater unanimity of sentiment. Several of those opposed to the policy of Gerard informed him that they would not demand conquests beyond what really belonged to the thirteen states.³⁹ There was considerable fear that if Canada were left to Great Britain she would prove a dangerous neighbor. Gerard reassured them with the promise of the unfaltering support of France, who would never allow them to sink back under the power of her rival. He also suggested that the whole question of boundaries be left until after the peace for settlement; but this plan received no support at all in Congress.⁴⁰ The debates on the acquisition of Nova Scotia convinced the New England delegates that it would not carry, and they substituted a demand for the right of fishing on the banks of Newfoundland, which was carried by a close vote.⁴¹

On March 19 Congress decided on the boundaries it would demand as an ultimatum. This boundary ran irregularly to the south end of Lake Nipissing, thence to the source of the Mississippi, down the middle of that river to the thirty-first parallel, thence along the northern boundary of Florida to the Atlantic.⁴² This vote was a compromise. It did not grant the demands of New England for

³⁷Gerard to Vergennes, March 10, 1779. (*E. U.*, no. 143, fol. 367.)

³⁸*Journals of Continental Congress* (Ford ed.), XIII, 369.

³⁹Gerard to Vergennes, March 8. (*E. U.*, VII, no. 135, new 339.)

⁴⁰Gerard to Vergennes, March 12, 1779. (*Ibid.*, no. 144, fol. 375.)

⁴¹*Journals of Continental Congress* (Ford ed.), XIII, 372; Gerard to Vergennes, March 18, 1779. (*E. U.*, VII, no. 159, fol. 407.)

⁴²*Journals of Continental Congress*, (Ford ed.), XIII, 339-341.

the possession of Nova Scotia, but laid claim to the whole region of the Great Lakes. At the same time the South and West received no promise of the navigation of the Mississippi or the possession of the Floridas. In this contest the partisans of Gerard had not yet showed their full strength. They felt sure of a majority in favor of the French policy, but were confronted by the untiring opposition of Lee. Such was the changing character of Congress that no policy could well be assured; and the partisans of Gerard were waiting until the time when they could carry their measure "by such a majority that Mr. Lee would find himself the only one in opposition."⁴³

The vote of Congress in March on the question of the boundaries and the Mississippi had satisfied no one. On the question of the fisheries the anti-Gallican party had been active.⁴⁴ New England was not content with the idea of having the English on its northern boundaries and renewed its proposal to conquer Canada.⁴⁵ Gerard was tireless in his opposition to this plan and urged upon Congress the futility of continuing the war for this purpose.⁴⁶ While he admitted that the treaty of alliance did not define the limits of the states whose independence was guaranteed, he still insisted that the guarantee could not be made to apply to territories not in the possession of the United States.⁴⁷

By July Gerard had come to feel that his policy with regard to the boundaries was triumphant. He had built up a large party in and out of Congress, but he had lost his influence over the leading men. He depended on men of minor caliber, like Jenifer of Maryland, who sided with the French policy and favored limiting the boundaries of the United States as much as possible.⁴⁸

⁴³ Gerard to Vergennes, (*F. U.*, VIII, no. 10.)

⁴⁴ Doniol, *Histoire*, IV, 175.

⁴⁵ Gerard to Vergennes, March 14. (*F. U.*, VIII, no. 48, new 83.)

⁴⁶ *Ibid.*

⁴⁷ Gerard to Vergennes, March 21. (*Ibid.*, no. 59, new 88.)

⁴⁸ *Ibid.*, IX, no. 17, new 103.

On the 12th of July Gerard held a conference with Congress in committee of the whole, in which he reviewed the whole history of French intervention and declared that the world was convinced that the war had no object of conquest but only to secure the independence of the United States. In this conference he urged also that Congress should seek the favor of Spain by the offer of such moderate terms as would incline His Catholic Majesty to the American interests.⁴⁹

As a result of his management Gerard believed that he held the affair of boundaries well under control. He did not flatter himself that Congress would renounce all its former pretensions, but he believed it would make no objection to the cession of the Floridas to Spain and would tacitly let go the navigation of the Mississippi. He even expressed his belief that if necessary it would willingly abandon Georgia.⁵⁰

The partisans of Gerard had postponed the final vote on the boundaries until a time when they could hope to carry their plan by an overwhelming majority. On July 18 Gerard wrote that the committee of foreign affairs stood eight to four in favor of his measure, and that his party worked unceasingly to win over votes. One of the most active supporters of this policy was John Jay, the president of Congress. Gerard, who himself took an active part in the campaign, thought that it was time to bring the question to a vote and to pass some measures favored by the opposition in return for their support on the boundaries. He felt that the strength of the anti-Gallicans was weakened by the failure of England to offer favorable terms of peace; but if the opposition should carry the vote in Congress, he proposed to attack its validity on the ground that the Articles of Confederation provided that every state must ratify a treaty.⁵¹

⁴⁹*Journals of Continental Congress* (Ford ed.), XIV, 829-835.

⁵⁰Gerard to Vergennes, July 20, 1779. (*E. U.*, IX, no. 46, new 109.)

⁵¹Doniol, *Histoire*, IV, 221-222.

In the meanwhile the "Junto" opposing the policy of Gerard was very active. Its organization and workings are obscure, but it suddenly attained great power in Congress. Its strength was unknown to Gerard, who declared that the influence of Lee in Virginia was destroyed and the opposition was confined to New England.⁵²

On the question of the boundaries and the treaty with Spain several plans were laid before Congress. Gerard favored a plan to outline the boundaries as vaguely as possible and to leave their final settlement until after the peace. On the question of cessions to Spain he felt there would be no difficulty.⁵³

In spite of his words of assurance, however, Gerard feared the power of the "Junto." He learned from his confidants that it would ask Congress to demand as an ultimatum an extension of boundaries as far north as 46°. The opposition declared openly that the justice of the king would never refuse these conditions so essential to the safety of the United States.⁵⁴

Early in August the battle in Congress openly began. On the 5th, McKean moved that, if Great Britain persisted in the war, Congress should seek to conclude treaties with both France and Spain providing for the conquest of Canada, Nova Scotia, and Bermuda. Spain and France were to be offered for their aid equal rights in the fisheries. This resolution was made in the interests of the northern states; but the southern delegation secured an amendment providing for the conquest of the Floridas and demanding the "free navigation of the Mississippi."⁵⁵

⁵²Gerard to Vergennes. (*E. U.*, IX, no. 100, new 116.)

⁵³*Ibid.* The actual disposition of Congress, Gerard wrote, is "to renounce the Floridas and tacitly to give up the navigation of the Mississippi, of which the two banks belong to that crown [Spain] provided they are given a free port for exporting their goods and importing merchandise."

⁵⁴Doniol, *Histoire*, IV, 222.

⁵⁵*Journals of Continental Congress* (Ford ed.), XIV, 924-926.

This resolution was an open defiance to Gerard. It repudiated all his advice and outlined a new policy of conquest. It is doubtful, however, if it was put forth seriously as a plan of action. More likely it was intended as a feeler to test the strength of the anti-Gallican party in Congress. The motion was not voted upon, but it threw open for debate the whole question of the territories and of the navigation of the Mississippi. Both sides understood that this was the last card of the game. Gerard, however, felt that he would win, for he controlled the committee of foreign affairs, and through it transmitted his arguments and threats to Congress.

In the meantime a special committee had been appointed to draw up terms of peace. It had done its work in consultation with Gerard, and on August 14 presented its report. The terms were more moderate than the demands of the anti-Gallicans. Florida and Canada were to be given up, but the northern boundary was to extend as far as Lake Nipissing.⁵⁶ Several reasons were back of this decision. News had just reached America of the alliance between France and Spain; and it was seen that the latter power would make strong demands for the Floridas.⁵⁷

The entrance of Spain into the war was made the occasion for new propositions of a treaty of alliance. On this question the extreme anti-Gallicans maintained their fight. On September 9 they introduced a resolution providing for an alliance with Spain whereby that power was to assure to the United States the possession of Canada, Nova Scotia, Bermudas, and the Floridas, as well as the navigation of the Mississippi. This motion provided, however, that if Spain should insist upon it, the United States would cede to her the Floridas and the exclusive navigation of the Mississippi below the thirty-first parallel. The character of this resolution clearly revealed the weakness of the extreme position, and it was tabled at once to make way for a more moderate one. After several days of debate

⁵⁶*Journals of Continental Congress* (Ford ed.), XIV, 956-967.

⁵⁷Doniol, *Histoire*, IV, 205.

it was resolved that if Spain would accede to the treaty of alliance, Congress would make no objection to her acquiring the Floridas, provided that the "United States shall enjoy the free navigation of the river Mississippi into and from the sea."⁵⁸

On information furnished by Gerard that England would probably soon seek peace, Congress resolved to send a representative to Europe who should be on the ground when the first advances were made. There were two leading candidates named, Jay and John Adams. Gerard and his partisans favored Jay as being more moderate in his views, while the anti-Gallicans gave their support to Adams.⁵⁹ After several days of delay the vote was taken on September 27 and Adams was elected minister plenipotentiary to negotiate a treaty of peace with Great Britain.⁶⁰ At the same time Jay was elected minister plenipotentiary to negotiate a treaty of alliance with Spain. On the next day instructions for Jay were decided upon, which in regard to the Floridas and the Mississippi were identical with those agreed to on the 9th.⁶¹ On October 13 Wither spoon moved that Jay be allowed to recede from the claim of a free navigation of the Mississippi below the thirty-first parallel, if such were necessary in order to obtain the alliance with Spain, but this motion was promptly defeated.⁶² The instructions to Adams were the same as those agreed upon on August 14.

The resolutions of August and September in regard to the boundaries and the Mississippi mark the formation of a definite policy by Congress. This policy was a compromise between the East and the South, between the French party and the anti-Gallicans. While Gerard was not entirely satisfied with the conditions laid down, he felt

⁵⁸*Journals of Continental Congress* (Ford ed.), XV, 1042-1046.

⁵⁹Doniol, *Histoire*, IV, 209.

⁶⁰*Journals of Continental Congress* (Ford ed.), XV, 1113.

⁶¹*Ibid.*, 1116.

⁶²*Ibid.*, 1168.

that they were not unfavorable to France.⁶³ He regarded the appointment of Jay as a decided step towards "conciliation" with Spain, and as a bid for the friendship of Charles III.

The work of Gerard as minister to the United States was finished. He had long been laboring under a severe malady attributed to the climate of Philadelphia and had struggled heroically against disease while upholding the interests of France and Spain. The Chevalier de la Luzerne, his successor, had already arrived in the United States and was in close touch with him. Congress regarded his departure with regret. In spite of his interference in American politics he retained his popularity till the last. Congress had his picture painted for its council chamber and wrote Louis XVI a flattering letter describing his loyalty and ability.

The mission of Gerard was unfortunate from the standpoint of both his own country and the United States. To Vergennes he gave a one-sided picture of conditions in the United States, and led him to believe that the great body of sober-minded, intelligent citizens favored restricting the boundaries of their country, and that the opposition was made up of a few narrow and bigoted fanatics. His meddling in the politics of Congress and his formation of a faction around himself led to serious results. It made the opponents of the French policy more determined and aggressive and aroused, in the minds of many, suspicion of the honesty and friendship of the French monarchy. This interference of Gerard alienated the ablest men in Congress, men like Jay and Morris, who had honestly favored the policy he advocated. As a result of his course of action the diplomacy of the United States was entrusted to his enemies and thus to men who looked with distrust on any policy advocated by Frenchmen. John Adams was elected minister plenipotentiary by an anti-French party and against the will of Gerard. Jay had

⁶³Doniol, *Histoire*, IV, 211.

long been associated with the French policy, but his change of heart was probably known to his colleagues before his election as minister to Spain. Gerard had carried out his policy without direction and without consultation with the French foreign office. After his first instructions, which directed him to look after the interests of Spain and to restrain Congress from all attempts at conquest, he acted nearly always on his own initiative. The result was a lack of harmony between the representations of Gerard in Philadelphia and the promise of Vergennes at Paris. The course of Gerard received the approval of Vergennes and considerably modified the general policy of the French court; and upon his reports were based the instructions to his successor Luzerne. Thus arose a serious divergence between the views of Congress and those of Vergennes, which was in turn to lead to mutual jealousies and suspicions; and to the conduct of Gerard is due in a large measure the irritation which later broke out between the French minister of foreign affairs and the envoys of the United States.

CHAPTER VII

VERGENNES AND THE ALLIES OF FRANCE.

The alliance between France and Spain did not win a friend for the United States. While it added another to the list of those fighting the British Empire, it divided the councils of her enemies; for the ambitions of Spain were unalterably opposed to the interests and aims of the United States. Florida Blanca had long feared the growth of a powerful rival in the New World, and he had urged that Great Britain be allowed to keep Canada as a check on the power of the new republic. Altho it was not stipulated in the convention, it was tacitly understood between France and Spain that no further effort would be made to conquer the British possessions north of the thirteen states.¹ Spain had made exorbitant demands for territories which the United States also claimed. To her possession of the Floridas there was no objection; but her demand for the exclusive navigation of the Mississippi aroused much opposition, and her claim to territory east of that river did not receive the slightest support in Congress.

Back of Spain's purpose to keep the United States a weak and dependent nation was the desire to build up a powerful empire around the Gulf of Mexico. Cuba, Mexico, and Louisiana formed three quadrants of this circle, and the possession of Eastern Louisiana and the Floridas would complete it. If, on the other hand, the vast regions to the east of the Mississippi should become peopled by a

¹Florida Blanca wrote to Montmorin, April 2, 1779: "dans la cas où la paix se feroit il convient de ne pas chasser les Anglois du Canada, cependant dans le cas contraire il seroit à mon avis, nécessaire de porter les vues des Americains de ce coté là ce qui serviroit a leur donner un objet d'occupations à prévenir leurs discorde intestines . . ." *Esp.*, 593, no. 77, new 180. Vergennes wrote to Florida Blanca, March 18, that while the Americans were anxious for Canada he would seek to induce them to give up such an undertaking. *Ibid.*, no. 33, new 81.

powerful and alien race. Spain would confront a new danger when frontiersmen, seeking an outlet to the sea, should come down and overwhelm her dominions. To avert this already apparent danger, the United States must be kept to the Atlantic seaboard, and her possessions hemmed in by Great Britain. The power and ambitions of the British Empire were known; but the formation of this strange republic on the outskirts of civilization filled the ministers of Charles III with strange and tempestuous terror.

Hardly had the ink dried on the signatures of the convention uniting France and Spain in the war when Florida Blanca proposed fresh restrictions on the growth of the United States. He suggested that Great Britain be left in possession of all posts in America which she was able to hold at the time of the ratification of the treaty of peace. This would mean that New York, Long Island, the greater part of Connecticut, and Rhode Island, including the city of Newport, most of Georgia and a part of Virginia should probably be left to the British Empire.²

It is to Vergennes's credit that he gave an absolute refusal to Spain's proposition. He declared that such a course would make it appear as if France had abandoned her allies, and would provoke their suspicion and enmity. It would be an open violation of the treaty of alliance, and as such would bring dishonor on the crown of France.³ This decided stand on the part of the French ministry put an early end to the plan of a settlement of American affairs

²Florida Blanca argued that the Americans needed peace so badly that they must accept any conditions. He maintained that by this arrangement the United States would always be menaced by Great Britain and consequently would become more attached to France. Montmorin to Vergennes, April 26, 1779. (*Esp.*, 593, no. 137, new 320.)

³Montmorin pleaded against the schemes of the Spanish minister that France had engagements with the Americans which bound her to a different policy. He declared that Congress would never consent to any such arrangement. (*Ibid.*) Vergennes also opposed the idea. May, 1779. (*Ibid.*, 593, no. 147, new 320; *ibid.*, 593, no. 157, new 343; *ibid.*, 594, new 162.)

on the basis of *uti possidetis* and assured to the United States a geographical unity.

The Floridas, however, were subject to conquest, and to this point the Spanish arms were at once directed. Spain was anxious to have the help of the United States in this undertaking, and altho she would give no recognition to them, Florida Blanca asked Vergennes to have them send an expedition into Florida from the north while Spanish troops attacked it from the Mississippi.⁴ Vergennes promised to do what he could, and instructed Luzerne to propose the matter to Congress.⁵ The mind of the Spanish minister however, soon took another turn; he gave up the idea of cooperation with the American troops, and in June sent orders to Galvez to attack the British possessions in America, and ordered other Spanish governors to help him.⁶

While Spain was definitely planning the conquest of the Floridas, Vergennes was worrying about the attitude of Congress on the question of boundaries. He could learn nothing from Franklin, but he feared the demands of the republic would be excessive. He was determined, however, in the negotiations for peace, to insist on no more than the integrity of the thirteen states.⁷

The attitude of Spain was also a source of uneasiness. Montmorin had intimated that negotiations between that

⁴"Il seroit bon cependant que les Colons cherchassent à entrer dans la Floride où de notre côté nous ferons une forte diversion par le Mississippi." Florida Blanca to Vergennes. (*Ibid.*, 594, no. 36, new 80.)

⁵May and June, 1779. (*Ibid.*, 594, no. 40, new 263; no. 41, new 267.) To Florida Blanca. (*Ibid.*, 594, no. 68, new 171; no. 73, new 180.)

⁶It appears that Florida Blanca became suspicious of Congress. He lost interest in St. Augustine and proposed to leave it to the Americans. Montmorin to Vergennes, May 11. (*Ibid.*, 594, no. 40, new 76; *ibid.*, no. 120, fol. 288.) For orders to other governors see Don Juan Baptiste Bonet, governor of San Domingo, to Gonzales de Castegon. (*C. O.* 5, 131, fol. 7: letter book of intercepted correspondence.)

⁷Vergennes to Bretuel, June 29. (*Esp.*, 594, no. 151, fol. 350.)

country and the United States must be handled carefully.⁸ Vergennes knew that Spain had no regard for the interests of the United States, and from her projects on the Mississippi he felt that his two allies were in danger of clashing.⁹

In spite of the importunities of Vergennes,¹⁰ Florida Blanca was slow to formulate his demands. He had realized that he could not obtain a settlement on the basis of *uti possidetis*, but he hoped that Great Britain could keep Canada and East Florida. West Florida with Pensacola and Mobile he was determined to have for Spain in order to exclude all foreigners from the Gulf of Mexico. To this end also he insisted upon the exclusive navigation of the Mississippi River, and intimated that this was a point he would not yield. All Spanish America, he maintained, must be closed to British and Americans alike.¹¹

Vergennes was soon relieved of his anxiety on this score by the report from America that Congress would probably surrender its claims on Canada and the Floridas, as well as the right to navigate the Mississippi River. At the same time he was informed of the strong feeling among the eastern delegates and their proposal to treat directly with Great Britain for the navigation of the Mississippi. In the light of this information Vergennes prepared the instructions to Luzerne, Gerard's successor, and it is evident that he wrote in a spirit of hostility to the United States. He believed that there was a strong English party in America, and if such could exist at this time he argued that no dependence could be placed on the permanent friendship of the republic.¹²

⁸He asked that the United States send an envoy of a character supple and conciliatory; one with firmness combined with sweetness and patience. Montmorin to Vergennes, June 3. (*Esp.*, 594, no. 85.)

⁹Vergennes, "Instructions to Luzerne," July 18. (*E. U.*, IX, no. 41, new 1.)

¹⁰Vergennes asked often for the views of Spain. He declared his unwillingness to cross her policy unless it were absolutely necessary. *Esp.*, 594, no. 201.

¹¹Montmorin to Vergennes, July 31. (*Ibid.*, 594, no. 220, new 491.)

¹²Doniol, *Histoire*, IV, 97.

With this view of the attitude of the United States, Vergennes opposed their position on every point of dispute, the western boundaries, the navigation of the Mississippi, and the Floridas. Just what was the western boundary he did not attempt to decide; but he feared the danger of a dispute between the United States and Spain over the lands from which the English might be driven. He accordingly urged Luzerne to get Congress to fix a definite boundary to their claims on the West, and especially did he fear the aggressions of the southern states.¹³

On the question of the navigation of the Mississippi, Vergennes was still more unfriendly to the claims of the United States. He had before this expressed himself favorably to the American demand; but now he declared that it was shown to his satisfaction that the Americans had no right to it. Before the Revolution, he said, the boundaries of the United Provinces in no place extended to the Mississippi; and it was absurd to claim the rights of Great Britain, whose authority they had abjured.¹⁴ He instructed Luzerne to demand from Congress the renunciation of all pretensions to the right to navigate the river, and the promise to limit themselves to soliciting the favor of the king of Spain.

¹³Vergennes wrote that it was the greatest interest of Congress to fix "d'une maniere claire, précise, et invariable les limites et les pretentions des Etats-Unis dans cette partie [the West] et surtout en prennent les precautions les plus efficaces pour prevoir les empietemens et pour empêcher les Provinces du Sud de se laisser aller à l'esprit de conquête." "Instructions to Luzerne," July 18, 1779. (*E. U.*, IX, no. 41, new 1.)

¹⁴"A l'égard de la navigation sur le Mississipi, il est a peu près démontré que les Américains n'y ont aucun droit puisqu'au moment de la revolution les limites des 13 Etats-Unis ne s'étendoient point jusqu'au Fleuve et qu'il Seroit abuser de leur part de reclamer les droits de l'Angre, c'est à dire d'une Puissance dont ils ont abjuré la domination. Il convient donc que le Congrès s'explique categoriquement sur cette matière en declarant que les Etats-unis ne forment aucune pretention a la Navigation du Mississipi et en se bornant à solliciter de la bonne volonté du Roi d'Espagne les faveurs que son intérêt lui permettra d'accorder aux Américains." *Ibid.*

To the Floridas also Vergennes declared that the United States had no right. As a peaceful British colony they were still open to the conquest of Spain. They were of no value to the United States, whereas Spain had a double reason for their conquest. In the first place they had formerly been a part of the Spanish empire, and in the second they were essential to the commercial interests of Spain and to her control of the Gulf of Mexico.¹⁵

Three separate kinds of considerations dictated these instructions: dislike of the anti-Gallican party in Congress, and a fear that it would lead the country into a policy unfavorable to France; a desire to win better support from Spain; and lastly a belief that many Americans favored these terms. Just how strong each of these considerations was it is impossible to say. For the first and third he had ample reason in the reports of Gerard; but he seemed never to have had much at heart the ambitions of the court of Madrid.

The Spanish government had given orders for the conquest of the Floridas and had authorized Don Juan de Miralles to plan in concert with the Americans a joint attack on these provinces. Before deciding on any further military operations, however, it was necessary to wait for news from D'Estaing, who had been instructed to make a naval demonstration in support of the Spanish attack.¹⁶ In spite of these measures Spain still showed no disposition to aid the cause of the independence of the United States. She was willing to grant them subsidies, but these were to be used only in an expedition against the Floridas. As month after month passed with no news of the success of its projects the anxiety and ambition of the Spanish court increased. The king felt that the conquest of Pensacola was the object in America nearest his heart and

¹⁵La Floride ne rendra les Etats-unis ni plus riches ni plus puissans et sa position géographique n'augmentera point leur sûreté extérieure." *E. U.*, IX, no. 41, new 1.

¹⁶Montmorin to Vergennes, September 27, 1779. (*Esp.*, 595, no. 165, fol. 438.)

urged that every effort be put forth to effect it.¹⁷ Plans were hurriedly rushed through to send reinforcements from Havana and the Americans were to be urged more vigorously to aid the expedition.¹⁸ So fearful did Florida Blanca become of the fate of the Spanish forces that he finally entreated France to send assistance¹⁹ and promised that if Vergennes would furnish troops and ships for the attack he would pay all their expenses.²⁰ To this proposal Vergennes at once agreed and declared that the French would be ready at any time with their contingent.²¹ He thought, however, that it would not be advisable to speak of this project to the Americans for fear of offending them. At the end of December news came of the success of Galvez on the Mississippi and his proposed attack on Mobile and Pensacola;²² and Florida Blanca at once began to hedge on the project of accepting French aid in the conquest of Florida. He felt that if victory could be assured by the efforts of the Spanish troops alone, it would be folly to pay for French assistance. To Montmorin he intimated that Spain did not wish to attack Pensacola, and that she would not subsidize the French troops prepared for the expedition,²³ but suggested that the united forces make a descent on England.

News of this change of plan aroused much indignation in the mind of Vergennes, who declared that the surest and quickest way to finish the war was to push it in Amer-

¹⁷Montmorin to Vergennes, November 8, 1779. (*Esp.*, 596, no. 76, fol. 179.)

¹⁸*Ibid.*, 596, no. 8, new 21; *ibid.*, 596, no. 95, fol. 224.

¹⁹Montmorin to Vergennes, November 22. (*Ibid.*, 596, no. 108.)

²⁰Montmorin to Vergennes, December 13. (*Ibid.*, 596, no. 167.)

²¹Vergennes to Montmorin, December 17. (*Ibid.*, 596, no. 183, fol. 407.)

²²Montmorin to Vergennes, December 13, 1779. (*Ibid.*, 596, no. 215, fol. 468.)

²³Florida Blanca to Aranda, January 9, 1780, enclosed with Montmorin's despatches of same date. (*Ibid.*, 597, no. 1, new 22, fol. 51.)

ica.²⁴ He felt sure that Florida Blanca was unreliable in his promises and would present all sorts of excuses for not keeping them,²⁵ and henceforth there was little sympathy manifested between the two courts, and the efforts of France became directed almost entirely to the preservation of the independence of the thirteen states.

At the beginning of 1780, Jay and Adams arrived in Europe with instructions on the views of Congress relative to the boundaries and the navigation of the Mississippi. Jay had been friendly to the plans of Gerard and was regarded very favorably by that minister, who believed he would consent to the Spanish pretensions, but Jay had become suspicious of French policy before he left America and he had imbibed a still deeper distrust of the ambitions of Spain. With him to think was to act; and he had thought deeply on the claims and pretensions of the Spanish monarchy to the Floridas and the Mississippi Valley.²⁶ He had come, however, to secure the alliance of Spain and the recognition of the rights of the United States; and no sooner did he land than he began preparations to carry out his instructions. On his arrival at Cadiz he sent his secretary, William Carmichael, ahead to Madrid to sound the Spanish minister on his intentions towards the United States, with instructions to do justice to the interests of

²⁴"Je serois bien fâché que M. Le C. de floride blanche renoncât a son enterprize sur Pensacola: je puis me tromper mais je pense qu'en poussant vigoureusement la guerre en amerique nous arriverons plus surement et plus promptement a la paix que par toute autre route." Vergennes to Montmorin, January 13, 1780. (*Esp.*, 597, no. 35, fol. 106.)

²⁵Same to same, January 29. (*Ibid.*, 597, no. 77, fol. 219.)

²⁶Gerard to Vergennes, September 9, 1778. Jay wrote that ". . . . both Mr. Gerard and Mr. Miralles . . . had shown me every mark of civility and attention, though I have reason to think both of them held higher opinions of my docility than were well founded." "When Spain afterwards declared war for objects that did not include ours, and in a manner not very civil to our independence I became convinced that we ought not cede to her any of our rights, and of course that we should retain and insist upon our right to the navigation of the Mississippi." *Ibid.* Jay, "On Navigation of the Mississippi," *Correspondence and Public Papers*, I, 328-331.

Virginia and the western countries near the Mississippi, and to represent to the Spanish court that it would be ages before these extensive regions would be settled. He also asked him to find out the intention of Spain in regard to the Floridas and the country along the Mississippi.²⁷ From these instructions it is clear that Jay thoroughly understood the ambitions and intentions of Spain. His information had come to him, when as the friend and comrade of Geràrd and Miralles, he had spent long evenings talking over an alliance with Spain and the concessions her king would exact as the price of his help.²⁸ He knew also that the conditions he had to offer were not such as Spain would wish and that she would likely refuse to acknowledge the independence of the United States unless her terms were acceded to, but to her demands he had resolved not to agree.

Jay did not know that Spain was the dictator in her alliance with France,²⁹ and he had no idea that Vergennes was exerting all his power to bring about an understanding between his allies, and that it was Spain who wished to restrict the power of the United States, and who was to prove herself a thorn in the flesh to all efforts to secure the territorial integrity of his country. Franklin had long been silent on the question of the West. Vergennes had not chosen to enter into negotiations with him on the subject, and Congress had sent him no instructions in regard to it; but Franklin, ever awake, had perceived the drift of Spanish policy, and its hostility to his country; and he understood full well that there was no sentiment in the Spanish ministry favorable to an alliance with the United

²⁷Jay, *Correspondence and Public Papers*, I, 266-268.

²⁸*Ibid.*, 327.

²⁹*Ibid.*, 266.

States.³⁰ Franklin knew too, that Congress had at last decided on a policy and he was ready to work loyally with Jay in carrying it out. Henceforth the representation of the United States in Europe was vigorous and aggressive, while Vergennes was compelled to play the role of peace-maker between his allies.

Florida Blanca proved to be more hospitable than Jay had hoped. He wrote a friendly note to Jay, inviting him to court, but at the same time informing him that he could not be received as the minister of an unacknowledged power.³¹ Carmichael, in company with Gerard, was received kindly by the French ambassador, who furnished him much information about the disposition of the Spanish king.³² He learned that several months before Miralles had been instructed to enter into engagements with Congress to conquer Florida, and he regarded this as significant for the prospects of a treaty of alliance.

The politeness of Florida Blanca did not convince Jay of the good intentions of Spain. He felt sure that the message of the Spanish minister meant that independence would be acknowledged only if the United States acceded to his terms. Back of the Spanish king he thought he perceived the power and influence of France.³³ Jay, however, returned a polite answer to Florida Blanca's note³⁴ and

³⁰"But I own, too, that my expectations of great aids from that nation are not much stronger than yours. As yet they know us too little, and are jealous of us too much; their long delay in entering into a treaty with us . . . is to me a mark of their not being over fond of a connection with us." Franklin to Carmichael, January 27, 1780. (Wharton, *Dip. Cor.*, III, 476.)

³¹Florida Blanca to Jay, February 24, 1780. (*Ibid.*, III, 515.)

³²Carmichael to Jay, February 15, 1780. (*Ibid.*, III, 496-7.)

³³"There are many reasons which induce me to suspect that France is determined to manage between us so as to make us debtors to their influence and good correspondence with Spain for every concession on her part, and to make Spain hold herself obligated to their influence and good correspondence with us for every concession on our part." Jay to Congress, March 3, 1780. (*Ibid.*, III, 530.)

³⁴Jay, *Correspondence and Public Papers*, I, 276.

the two soon entered into a discussion of the resources of the United States with the apparent purpose of forming an alliance.³⁵ It was not until May 11 that they held a discussion on the main points of difference between the two nations. In this conversation Florida Blanca plainly intimated that the great obstacle to the alliance was the claim of the United States to the right to navigate the Mississippi River. He urged also that they settle the question of the boundaries and expressed a desire to obtain such concessions that the English would be entirely excluded from the Gulf of Mexico. Jay reminded Florida Blanca that many of the states had for their western boundary the Mississippi and were interested in its navigation; but he expressed the opinion that they would be willing to adopt any reasonable precaution against the carrying of contraband. The Spanish minister courteously expressed his desire for an amicable adjustment and the interview closed. Jay reported to Congress that if it remained firm there would be little doubt of the outcome.³⁶

Equally anxious with Jay for an understanding between Spain and the United States was Vergennes; but far better than Jay, he understood the aims of Spanish diplomacy. He knew its dislike of the new republic, and its fear that the example of a successful rebellion would have a dangerous effect on the extended colonies of Spanish America; and finally he understood from long experience its utter selfishness and greed.³⁷ At the same time he felt that, in order to hold Spain to the war, he must further all her projects as agreed to in the convention, and in accord-

³⁵Florida Blanca wrote to Jay, March 9, desiring, before entering into a discussion on terms of alliance, to know the civil and military condition of the United States. (Jay, *Correspondence and Public Papers*, I, 277.) Jay replied in a lengthy memorial on April 25. (*Ibid.*)

³⁶Jay, "Notes on Conference with Florida Blanca taken immediately after the conversation." (Wharton, *Dip. Cor.*, III, 722 *et seq.*)

³⁷Vergennes to Montmorin, March 13, 1780. (*Esp.*, 598, no. 37, new 106.) Vergennes frequently expressed his opinion of Spanish policy as selfish and unreasonable, with no regard for the rights of other nations.

ance with this policy he proposed attacks on Florida,³⁸ Jamaica, Gibraltar and other English possessions.³⁹ In fact the French ministry displayed more zeal and energy in these undertakings than did the Spanish court. Of all the campaigns inaugurated by Florida Blanca only that of Galvez in Louisiana was carried out with vigor, and he was unsupported by the other Spanish governors.⁴⁰ While Spaniards were congratulating themselves on their victories on the Mississippi, their French allies were urging them to perfect their control of the Gulf of Mexico, by an attack on Mobile and Pensacola, and even to attempt the conquest of Jamaica.

In March Montmorin reported to Vergennes his suspicions that Spain had begun through the Count of Lisbon negotiations for peace with England. These negotiations were a source of much uneasiness to the French ministry; and it was felt necessary to take part in them so as to assure the principal object of the war, the independence of the United States.⁴¹ Montmorin at once began representations to Florida Blanca of the danger of allowing the United States to return to the dominion of England, to which the latter replied that he would provide a source of constant quarrels and divisions between the two.⁴² Vergennes saw at once that if these negotiations were allowed to continue the interests of the United States would be sacrificed and France humiliated. So serious was the situation that Louis XVI wrote directly to Charles III urging that the two powers should continue to act together.⁴³ To this the response was favorable and Charles declared that he would never "compromise either the dignity of his crown or its sacred engagements."⁴⁴ Florida Blanca gave

³⁸Vergennes to Montmorin, March 13. (*Esp.*, no. 38, new 108.)

³⁹Montmorin to Vergennes, March 13. (*Ibid.*, fol. 181.)

⁴⁰Montmorin to Vergennes, March 13. (*Ibid.*, 599, no. 41, new 76.)

⁴¹Montmorin to Vergennes, March 13. (*Ibid.*, 598, no. 42, new 125.)

⁴²Montmorin to Vergennes, April 14. (*Ibid.*, no. 160, new 413.)

⁴³Doniol, *Histoire*, IV, 551-554.

⁴⁴*Ibid.*, 456, note.

some rather lame excuses for the presence of a British agent in Spain and the affair was allowed to drop.

This incident convinced Vergennes that it was necessary to give Spain additional concessions if she were to maintain an interest in the war. In order to allay Spanish suspicions, he prepared a memorial on the benefits of an alliance with the United States in which he maintained that there was no danger to the possessions of the Spanish monarchy so long as the United States were dependent upon the two crowns for protection and that this dependence would exist as long as England held Canada and Ohio.⁴⁵ Thus it appeared that Vergennes would not insist on the American claims to the Northwest. Montmorin informed him that the great obstacle to an agreement between the United States and Spain was the navigation of the Mississippi,⁴⁶ and on this account negotiations were proceeding slowly and likely to continue to do so. He expressed to Vergennes the belief that it would be well to inform Spain of the terms of alliance between France and the United States, to which the latter replied that the best explanation of the relations between the two countries was the text of the treaty of alliance. "Independence," he wrote, "is the first of all; it is the basis of our common treaty and ought to be for the negotiations of peace. The guarantee of the domains of the United States is contingent, their extent will be determined only by a future pacification."⁴⁷ He was still determined, however,

⁴⁵Vergennes wrote to Montmorin, April 26, 1780: "Si les premiers [the United States] doivent à l'influence et à la protection des deux couronnes leur independance et que les autres [the British] conservent ce dont il nest que . . . possible de les priver la nouvelle Ecosse, le Canada, et L'Ohio, dans Cette position les Americains auront toujours besoin des deux couronnes pour contenir et en imposer a un voisin qui sans entreprendre sur leur liberté deverrue constitutionnelles ne cessera d'empieter sur leur territoire. (*Esp.*, 399, no. 35, new 8.)

⁴⁶*Ibid.*, 599, no. 51, new 119; *ibid.*, 599, no. 60, new 85.

⁴⁷Vergennes to Montmorin, June 12, 1780. (*Ibid.*, 599, no. 44, fol. 282.)

to drive the English out of all territory which was an integral part of the thirteen states.⁴⁸ Vergennes himself appeared to be confused as to just what were the claims and rights of the United States.

In June, 1780, news reached Spain of the capture of Mobile by the army of Galvez. The court and nation gave way to the liveliest expressions of joy,⁴⁹ and the feeling arose that the Spanish army could defeat the English without any foreign assistance. The effect was disastrous to the work of Jay, who found Florida Blanca henceforth more arrogant and exacting, and more unfavorable to the claims of Congress.⁵⁰ After his conference with Florida Blanca in May, Jay was unable to get any further propositions from him on the subject of a treaty. He always avoided any mention of giving aid to the American cause and to the notes of Jay on the subject he had returned no reply. Bills kept coming in for Jay to pay, and finally in desperation he went to Montmorin for help. The French minister promised to do what he could; and early in September Florida Blanca sent his secretary Gardoqui to reopen negotiations with the American commissioner.

The conferences with Gardoqui began on September 3, and the first question that came up was the payment of bills drawn on Jay. Gardoqui remarked that if the United States expected any help from Spain they must be prepared to offer some consideration in return. He hinted that, among other things, the renunciation of the right to navigate the Mississippi would be most acceptable to his court.⁵¹ To this suggestion Jay replied that the Mississippi could not come in question as a consideration for a hundred thousand pounds. He declared, furthermore, that the American nation regarded this river as the natural outlet to the vast and fertile regions of the West, and that without it the settlers beyond the Alleghanies could never

⁴⁸Vergennes to Montmorin, (*Esp.*, 599, no. 120.)

⁴⁹*Ibid.*, 599, no. 65, 66; *ibid.*, no. 194.

⁵⁰Jay, *Correspondence and Public Papers*, I, 386.

⁵¹Jay to Congress. (*Wharton, Dip. Cor.*, IV, 64.)

hope to get their products to the sea. To these arguments Gardoqui observed that the Americans would not need this navigation during their generation and that future generations could care for themselves.

Jay was much discouraged at the progress of his negotiations in Spain and wrote in a despairing tone to Franklin.⁵² He felt that little help could be expected from Spain, altho he was again convinced of the friendship of France.⁵³ Franklin, however, was more optimistic and urged Jay to continue his efforts. He agreed with him, however, that the United States should never give up the right to the free navigation of the Mississippi.⁵⁴

On the evening of the 23rd Jay was admitted to a conference with Florida Blanca on the points at issue between the two countries. During the conversation Jay once more brought up the question of an alliance; but Florida Blanca replied that there was no occasion to hurry, and Jay would have time to obtain instructions from Congress on the articles to be proposed. He then brought up the question of the exclusive navigation of the Mississippi and its importance to Spain, which nation, he declared, would hold to her rights. He observed that "unless the Spaniards could exclude all nations from the Gulf of Mexico, they might as well admit all," that it was one of the principal objects of the war and of greater importance even than Gibraltar. If they could obtain this, he said, it would be a matter of indifference whether or not Spain obtained any

⁵²Jay, *Correspondence and Public Papers*, I, 395.

⁵³"When I consider on the one hand that France was our first, and is still our best and almost only friend, that she became an ally on terms of equality, neither taking nor attempting to take ungenerous advantage of our situation, . . . gratitude and generosity forbid me to solicit a further tax on her generosity." Jay to Congress, September 22, 1780. (Wharton, *Dip. Cor.*, IV, 65.)

⁵⁴"Poor as we are yet, I know we shall be rich. I would rather agree with them to buy at a great price the whole of this right on the Mississippi than sell a drop of its waters. A neighbor might as well ask me to sell my street door." Franklin to Jay, October 2, 1780. (*Ibid.*, IV, 75.)

other cession.⁵⁵ This interview convinced Jay that there was no hope of an immediate treaty with Spain, and he turned his attention to other matters.

Altho Spain had given the fullest assurance of loyalty to France, she continued her negotiations with England. France was aware of her actions, but was in no position to interfere. The war in America had produced no brilliant victories; the treasury was depleted;⁵⁶ and the king, grown despondent, was anxious for peace. The fears of Louis were further increased by the constant demands of the Spanish court for a general pacification. Vergennes also was anxious for peace, but he had resolved to obtain it only on terms honorable to his king and in accordance with his promises to the United States.⁵⁷ What disturbed him most was the Spanish insistence upon the *uti possidetis* in America, which would leave England in possession of New York and the two most southern states.⁵⁸ He urged Montmorin to sound Florida Blanca again to see if he would consent to the recognition of the United States with all their possessions, for he held that this was the only honorable course for all concerned.

Florida Blanca continued his negotiations with Great Britain, on the basis of the cession of Gibraltar to Spain and of leaving that country in possession of all other territory then held by her arms.⁵⁹ This would have given Spain

⁵⁵Jay to Congress, November 6. (Wharton, *Dip. Cor.*, IV, 146.)

⁵⁶Doniol, *Histoire*, IV, 487.

⁵⁷*Ibid.*, 488; Vergennes to the king, September 27, 1780. (*Archives Nationales*, 164, no. 3.)

⁵⁸Vergennes to Montmorin, September 27. (*Esp.*, 601, no. 17, new 38.)

⁵⁹Vergennes wrote to Montmorin that "Either the outcome of the war will be most happy for England or that power will suffer great misfortunes; in the first case Spain will redouble her efforts to make peace with least disadvantage to herself and probably with greatest disadvantages to us; in the second case the court of London will make the most liberal and most appropriate offers to seduce Spain; she will show herself disposed to cede Gibraltar, Pensacola, and Mobile, and perhaps a part of the fisheries of Newfoundland, providing the Americans should be abandoned and France forced to break her agreement with them." September 27, 1780. (*Esp.*, 601, no. 155.)

possession of all she wished in Florida and have left the United States at the mercy of their neighbors; but it was a policy to which Vergennes would not agree. Florida Blanca had asserted that the United States were still attached to England and would prove ungrateful allies to France;⁶⁰ but his arguments did not appeal to the French minister, who reasoned that with England in possession of Canada, there could be nothing but perpetual hostility between the two nations.⁶¹

It was apparent that Spain would continue her efforts to make peace on the basis of *uti possidetis*, and the French court feared that it might have to accede to these terms. In order, however, to obtain for the United States as much of their territory as possible, Montmorin proposed to transfer the seat of war to America, and endeavor to drive the British out of New York and their position in the south.⁶² This proposition received serious consideration from Vergennes, who saw that the Spaniards were trying to confine the United States to the interior, and to leave England in possession of all their seaports,⁶³ an outcome which he was resolved to prevent. Spain had no sympathy for England, but she disliked revolting colonies and she wished to make this rebellion a terrible example to her own possessions. No other motive could have led her to demand such hard conditions as the price of recognition of the United States, and to demand such conditions against the wishes of her old time friend and ally, France.

Vergennes was now firmly convinced that the only aim of Spain was to get all she could out of the war even at the sacrifice of the interests of the United States and

⁶⁰Montmorin to Vergennes, November 20. (*Esp.*, 115, no. 142.)

⁶¹Vergennes to Montmorin, December 8. (*Ibid.*, 90, no. 172.)

⁶²Montmorin to Vergennes, October 30, December 20, 1780. (*Ibid.*, no. 100; *ibid.*, no. 101; *ibid.*, no. 219.)

⁶³Vergennes to Montmorin, November 20. (*Ibid.*, no. 155, fol. 385.)

the honor of France.⁶⁴ As late as March, 1781, Florida Blanca had shown his objections to recognizing the independence of the United States. He suggested, however, that it would be a great concession if their independence could be assured with such territory as they then held, while the British should be left in possession of all that was occupied by their troops.⁶⁵ He intimated also that Spain desired to control the navigation of the Mississippi and to obtain the ancient province of Eastern Louisiana⁶⁶ in addition to the Floridas. On these questions Vergennes took no stand, for he felt that they could be settled at the time of the peace negotiations between the two interested powers.⁶⁷ At the same time he declared that the United States must be recognized as an independent nation with all the territories that were a rightful part of their dominions.

France was anxious for peace and was ready to make many concessions to obtain it. The national treasury was empty and there were constant demands upon it, not only to supply French needs but also those of her allies. The war had, on the whole, been unsuccessful, and reports of victory were infrequent. Before seeking peace, however, Vergennes resolved to make one more attempt to drive the English entirely out of the United States and thus secure for them territorial unity and a real independence. If this attempt should succeed, France could then enforce an honorable peace; "if we fail," he wrote, "we ought not, at least, to be blamed for having neglected anything in our power

⁶⁴"Never lose sight of the fact that Spain is devoted to her own interests before all else and that she will subordinate to them all other conditions of peace, that she will interest herself very little in the Americans, whose independence she would see with grief." Vergennes to Montmorin, January 22, 1781. (*Esp.*, 602, no. 47.)

⁶⁵Montmorin to Vergennes, March 11, 1781. (*Ibid.*, no. 16, fol. 303.)

⁶⁶Marbois to Montmorin, October 17, 1780. (*Ibid.*, 601, no. 63, fol. 135.)

⁶⁷Montmorin to Vergennes, March 12, 1781 (*ibid.*, 602, no. 18, fol. 310.) Vergennes to Montmorin, April 12, 1781 (*Ibid.*, 603, no. 25, fol. 57.)

to procure it."⁶⁸ The efforts of the French forces were to be directed equally in the interests of Spain and of the United States. De Grasse was sent with a powerful fleet to America,⁶⁹ and large sums of money were given to Washington with which to equip new troops.⁷⁰ At the same time preparations were made for a new expedition against Pensacola.⁷¹ Soon after this Vergennes wrote to Luzerne that the king was in accord with the policy of Congress to uphold the territorial rights of the union, but warned him that the fortunes of war were such that some sacrifices might be necessary for peace.⁷² The tone of this message displayed a spirit of fairness and cordiality towards the United States, in striking contrast to the arrogant demands of Spain.

During the past year Spain and France had drifted farther apart, having moved along different lines of action. Spain wished to abandon the United States in return for concessions from England; France insisted that independence should be the first condition of peace and that other advantages should be sought only after this was recognized. This was a policy France had consistently maintained; and in the face of military reverses and an impoverished treasury and in opposition to the entreaties and threats of her Spanish ally, she remained the loyal and unflinching friend of the nation she had called into life.

⁶⁸Doniol, *Histoire*, IV, 544.

⁶⁹*Esp.*, 602, no. 137.

⁷⁰Doniol, *Histoire*, IV, 587.

⁷¹*Esp.*, 603, no. 80.

⁷²*E. U.*, XVII, no. 155, new 19.

CHAPTER VIII

LUZERNE AND THE PRETENSIONS OF SPAIN.

The independence of the United States was with Vergennes the prime object of the war, and continued throughout the first aim of his policy. To him this meant the independence of the thirteen states with all the territories belonging to them. The extent of their dominions he did not know, and his idea of it varied from time to time. He did not, however, consider at any time either Canada or the Floridas as a part of the republic, for these provinces had never joined in the rebellion, and throughout the war remained peaceful subjects of Great Britain. If they still were a part of the British Empire it followed naturally enough that they were legitimate subjects of conquest for any nation at war with the mother country. Canada the French minister had resolved to leave to the British crown; but Spain looked with greedy eyes upon the Floridas, and he saw no reason why she should not have these provinces.

There yet remained the question of the West; the control of the Mississippi Valley and of the river that bears its name. Vergennes had been slow to express his opinion on the subject, for he had no knowledge of the merits of the dispute, and was compelled to depend on the reports of his agents and the representations of Florida Blanca. From the former he learned of the conflicting opinions in Congress and of the large number of men there who were willing to surrender all claims to the West; from the latter he heard only assertions of Spain's right to this domain and demands that it be acknowledged.¹

Political considerations also doubtless influenced Vergennes. He was anxious to hold Spain to the war and felt it necessary to make many concessions to keep her in good humor, and, on the other hand, he identified the party in

¹ See Vergennes's instructions to Luzerne, July 18, 1779, pp. 133, 134.

Congress opposed to Spanish pretensions with the anti-Gallican party. Under the influence of these impressions, he drew up instructions for Luzerne in July, 1779. It was here that he first took a definite stand on the great questions at issue, and his decision was against the United States. On the navigation of the Mississippi he upheld the contentions of Spain and he gave no encouragement to the hopes of the Americans to extend their authority over the West. It is possible that he did not understand the full extent of Spanish claims in the Mississippi Valley, but when those claims were defined, France had already committed herself to the Spanish position.²

Luzerne arrived in America at a time when Congress was most anxious for an alliance with Spain and was willing to make many concessions to obtain it.³ The new minister landed in Boston and spent some time investigating the attitude of New England. He quickly came to the conclusion that the people of this region still desired the annexation of Canada in order to control the fisheries, and if they could not get all of Canada they would at least insist upon Nova Scotia.⁴ The efforts of Gerard to induce

²Vergennes's instructions to Luzerne, July 18, 1779. In these instructions Vergennes spoke of the West in a very vague way. At the most he thought of leaving only the lower Mississippi in Spanish hands, while the Northwest was unsettled. Some time later he wrote that it was hardly possible "de les [English] priver la nouvelle Ecosse, le Canada, et L'Ohio . . ." Vergennes to Montmorin, April 26, 1780. (*Esp.*, 599, no. 35, new 8.)

³"On [Congress] a aussi délibéré sur le Traité à proposer à l'Espagne; On a conclu qu'on lui offriroit la garantie des Florides mais on n'est pas encore convenue définitivement si on contribueroit à lui conquête." Gerard to Vergennes, August 8, 1779. (*E. U.*, IX, new 83.)

⁴Luzerne wrote that the conquest of Canada lay near the hearts of the New Englanders because they regarded that country as a safeguard to their independence, but if they were compelled to choose between the two they would take Nova Scotia on account of the fisheries. September 3, 1779. (*Ibid.*, X, no. 4.)

this section of the country to give up all idea of conquest had proved fruitless.⁵

The Floridas, however, did not offer so difficult a problem. Congress had practically decided on a policy by which they were to go to Spain on condition that the right to navigate the Mississippi and the use of a port on the Gulf be given the United States.⁶ To the Southern delegates, according to Gerard, the use of a port on the Gulf was of more importance than the right to navigate the river.⁷ Gerard wished Spain to take possession of the Floridas at once, and suggested that the question of the ownership of Eastern Louisiana and the navigation of the Mississippi be left to future settlement.⁸

Both Spain and the United States, however, were insistent upon their claims to the Southwest. The points at issue were further complicated by the conflicting demands of the several states. Virginia and other states laid claim to vast regions, in virtue of their ancient charters, while the landless states held that dominion won by the common efforts should be the property of all.⁹ These contentions

⁵"je me suis vivèment recrié Mgr. contre l'idée de conquérir ainsi d'un trait de plume une des possessions plus importantes de l'Angre J'ai observai qu'il n'y auroit que trop de peine à obtenir l'indépendance et la restitution san equivalent des Territoires conquis par les armes de Gde Bretagne." Gerard to Vergennes, March 1, 1779. (*E. U.*, VII, no. 67, new 123.)

⁶See page 128.

⁷Gerard wrote to Vergennes, September 25, that Congress would offer Spain the guarantee of the Floridas up to the thirty-first degree of latitude and even promise assistance in conquering them, on condition that Spain would grant the United States the free use of the Mississippi, and give them a port south of the thirty-first degree of latitude. (*E. U.*, X, no. 37, new 125.)

⁸Gerard to Vergennes, September 7. (*Ibid.*, no. 20, new 122.)

⁹" . . . il est bien à craindre Monseigneur que ces avantages mêmes ne soient une cause de desordres dans la Republique amèricain et que la 1^{ere} conquête de leur armées reunie ne repande parmi eux de nouveaux germes de disunion. Les délégués des États Limitrophes pretendent y avoir des droits incontestables en vertu de leurs Chartes" Gerard to Vergennes, November 8, 1779. (*Ibid.*, X, no. 9, new 81.)

gave Spain a decided advantage in the negotiations, an advantage which she pressed to the utmost.

For some time Miralles had taken little part in the discussions concerning the West, and, apparently without the authority of his court, had left the interests of his country to the care of Luzerne. When in November, 1779, Florida Blanca instructed his agent to seek the aid of Congress in the conquest of the Floridas and the lower Mississippi,¹⁰ Miralles at once asked the help of Gerard. The forces of the United States had already penetrated the West, and it was plain that pressure must be brought to bear if Spain were to make good her pretensions there.¹¹

Luzerne proceeded cautiously in this work. He did not explain to Congress the full purport of Miralles's instructions, but spoke at length of the necessity of cooperation between the United States and Spain. The conquest of the Southwest he represented as merely a combined attack upon the possessions of Great Britain, and he said nothing of the ultimate ownership.¹²

Congress was perfectly agreeable to the project of letting Spain have the Floridas, but it showed a determination to maintain American claims to the West.¹³ Luzerne

¹⁰After speaking of the Floridas, Miralles said to Luzerne: "Je suis aussi chargé d'inviter l'honorable Congres a entreprendre la conquête du territoire et de possession occuper par les Anglois au Nord Est de la Louisiane et comme le Gouvernement de cette province par ses lumieres peut contribue infiniment au succes d'une pareille entreprise il desire de connoître le plan d'operation auquel le Congres s'arreter dans cette partie." September 25, 1779. (*Papers of Continental Congress*, no. 195, vol. I, fol. 21: Letters of Luzerne.)

¹¹Le succès le plus complet a accompagné cette entreprise et les Etats unis se trouvent aujourd'hui tant par le droit de conquête que par l'émigration totale des habitants possesseurs d'une vaste et fertile contrée." Luzerne to Vergennes, November 8. (*E. U.*, X, no. 9, new 81.)

¹²*Papers of Continental Congress*, no. 95; Letters of Luzerne, vol. I, fol. 25.

¹³Congress referred the matter of the Floridas to Washington, who agreed to approve the expedition as soon as the British were driven out of the Southern states. Luzerne to Vergennes, December 17, 1779. (*E. U.*, X, no. 118, new 337; *Journals of Continental Congress* (Ford ed.), XV, 1331-2; *ibid.*, 1387.)

hesitated to press the matter for he saw many difficulties in the way and did not dare offend the United States. Virginia claimed all the country westward to the Mississippi and was busy conquering it.¹⁴ Under these circumstances Luzerne saw no way for Spain to get possession of this territory unless she could seize it before the Americans could further occupy it. After some effort, however, he got several members of Congress to admit that this region was not a part of the thirteen states, and as such was open to conquest by any enemy of Great Britain. They were careful to state, however, that the United States had an equal right to conquer this country; and as Americans already held Kentucky and Tennessee, and the success of George Rogers Clark seemed assured, this admission amounted to little towards forwarding the plans of Spain.¹⁵

¹⁴"M. de Miralles auroit désiré que jappuyasse ses demandes d'une manière plus articulée que je n'ai pas fait Non obstant ses instances j'ai cru devoir me borner à des simples insinuations Vous remarquerez cependant que dans la reponse que M. le President me fait au nom du Congrès il garde le Silence Sur la requisition dont lui a fait part M. de Miralles d S'occuper de la conquête des parties de la Louisiane et dependance dont les Anglois Sont en possession Sans ajouter pour le compte de qui cette conquête doit etre fait. J'ai lieu de presumer que les intérêts de quelques États et leurs vues d'agrandissement sont cause de ce silence autant que l'Ultimatum dont M. Adams est chargé. En effet la Virginie poursuit ses Enterprises contre les parties du territoire britannique qui Se trouvent comprises entre les anciennes limites de cet Etat ét le Mississipi et prétend que Sa charter lui donner des droit incontestables sur ses territoires D'un autre coté l'incertitude qui a subsisté avant la paix de 1763 touchant les anciennes limites de la Louisiane, et les lettres du Gouverneur de la havane à Don Juan paroissent à quelques égards indiquer que la Cour de Madrid a des vues Sur ces mêmes territoires, et qu'on invitent les Etats-unis à enfaire la conquête, elle suppose qu'ils les lui cederont de la même manière que la floride orientale l'être, en cas qu'ils puissent la conquerir." Luzerne to Vergennes, December 17, 1779. (*E. U.*, X, no. 18, new 118.)

¹⁵" il est vraisemblable qu'il ne se déterminera pas aisement a vendre ou a céder ce qu'il aura conquis. Ainsi Monsiegnur, Si la Cour [of Madrid] a reelemnt des projets Sur ces territoires et qu'il ayent l'aprobation du Roi, il seroit convenable que cette Cour s'occupat de leur execution, ou du moins la preparat pas des insinuations faites au Congrès tandis qu'il en est encore tems. Un nombre assez considerable de Delegates

With the bright prospects for success in the West, Congress assumed a more independent attitude towards Spain, and even threatened to hold no more communication with Miralles, unless he were officially accredited from his court.¹⁶ They spoke boldly of Clark's conquests, and treated the interests and claims of Spain with contempt, while even France received less courtesy than formerly.

Canada again came in for a share of attention, this time doubtless through the influence of the New England delegates.¹⁷ Washington now approved its conquest but Luzerne opposed the measure strenuously.¹⁸ When a delegate asked for the cooperation of the French fleet, he declared that the most important duty was to drive the British from the states and then it would be honorable to offer freedom to the Canadians.¹⁹ In this project Luzerne could see nothing but jealousy of the North towards the plans of the Southern states, and he declared that New England was ready to sacrifice the rights of her neighbors for the sake of the Canadian fisheries.²⁰

The pretensions of Congress did not meet the approval of Vergennes. He declared that the guarantee of France

envisagent ces Countrees comme appartenantes réelement a l'Angleterre en vertu du Traite de Paris et non obstant les termes des différentes chartres ils sont disposés a reconnoître le droit de la puissance ennemi de la Grande Bretagne qui enfera la conquête. En attendant un officier des Troupes de Virginie comme sous le nom du Colonel Clark, homme d'un genie actif et audacieux fait dans l'Ouest des courses qu'on considera un jour comme des conquêtes et l'on m'assure d'une maniere positive que sans egard aux Stipulations du Traite du Paris cette officier s'est avancé de l'autre coté du Mississipi a une distance très considerable, et a pris possession au nom de l'Etat qu'il Sut" *E. U.*, X, no. 18, new 118.

¹⁶*Ibid.*

¹⁷Washington, *Writings* (Ford ed.), VIII, 138-141.

¹⁸Luzerne to Vergennes, December 13. (*E. U.*, X, no. 110, new 317.)

¹⁹Luzerne to Vergennes. (*Ibid.*, XI, no. 33.)

²⁰Luzerne wrote to Vergennes in January, 1780, that the north had no disquietude for the dangers of the South, but feared more its rivalry and resources. He declared that it would without regret abandon the southern states to their fate if they thought this would help them get Canada. (*Esp.*, XI, no. 33, new 107.)

was for the independence of the United States with such possessions as they held at the end of the war. This guarantee, he maintained, did not in any sense bind the guarantor to aid in making conquests beyond the legal boundaries of the original states.²¹ Vergennes had not changed his mind regarding Canada, nor had he changed his opinion of the West since issuing his first instructions to Luzerne. He felt that those who insisted upon the conquest of this territory were the enemies of peace and were seeking to embarrass Congress. The changed attitude of France was made manifest in the position of Luzerne on Spain's proposition for a settlement on the basis of *uti possidetis*. He declared that such an arrangement was not unfair, and urged Congress to use every effort to drive out the British before beginning negotiations for peace.²² It is very improbable, however, that he had any serious thought of abandoning to the English any part of the union as he understood it,²³ and it is certain that Vergennes would not have consented to any such arrangement.

The opinions of Luzerne were duly reported to Congress, where they became the signal for many bitter speeches. Congress no longer boasted of the able men who had adorned its meetings in other years; but its members, altho narrow and resentful, were determined to thwart the purposes of Spain, and in this they received popular

²¹"Il n'en resultera autre chose sinon que le roi est actuellement et definitivement garant de leur independance et que sa garantie pour leurs possessions et conquêtes n'est que eventuelle, c'est a dire dépendantes des événements de la guerre . . ." Vergennes to Luzerne, September 25, 1779. (*E. U.*, X, no. 2, new 38.)

²²*Journals of Continental Congress* (Hunt ed.), XVI, 88; *E. U.*, XI, no. 36.

²³Luzerne wrote to Vergennes, June 24, 1780, that the British were trying to persuade the people of South Carolina that their fellow states had abandoned them; and he suggested that the British were also trying to form a new colonial empire out of the Carolinas, Georgia, the Floridas and the Bahamas. Luzerne felt that, in spite of its dissensions, Congress would not consent to sacrifice any of the states. (*E. U.*, XII, no. 118, new 396.)

support.²⁴ They declared that it was the purpose of the Bourbon powers to break up the union; and they started an opposition to the influence of them both which did not subside during the war, and which made agreement between the United States and Spain impossible. The feeling in Congress was intensified by further attempts of Luzerne in behalf of Spanish pretensions. Spain had presented an "ultimatum" to Great Britain, and in the discussion of this with Congress Luzerne had asked that body to explain itself on four questions at issue. These were the western boundary of the United States; the navigation of the Mississippi; possession of the Floridas; the lands on the left or eastern bank of the Mississippi.²⁵ Before giving Congress an opportunity to answer Luzerne proceeded to state the contentions of Spain. He argued, in her behalf, that the boundaries of the United States extended no farther to the west than the headwaters of the streams flowing into the Atlantic, and for this he cited the royal proclamation of 1763. If this were true the United States would nowhere border on the Mississippi and hence had no claim to navigate that river. This proclamation also cut off the Floridas from the United States according to the Spanish contention. None of this territory, Luzerne maintained, was part of the original colonies, and so could not be a part of the United States.²⁶

These proposals aroused considerable surprise and much indignation among the members of Congress. The delegates argued that they had a just claim to all the lands as far as the Mississippi, not only by right of conquest but by the grant of the colonial charters. They declared further that the treaty of 1763 had assured the right to Great Britain of the free navigation of the Mississippi, and they claimed the same right for themselves. They

²⁴Les Articles de l'Ultimatum . . . commencent à être connu dans les Etats de l'Est et la fermentations qu'ils excitent parmi le peuple dans les villes de Commerce Seroit d'un nature inquietude." Luzerne to Vergennes, January 16, 1780. (*E. U.*, XI, no. 25, new 18.)

²⁵*Journals of Continental Congress* (Hunt ed.), XVI, 114.

²⁶*Ibid.*

would agree to restrict the navigation to merchant vessels, but they insisted upon the right to trade. Nothing was said of the ownership of lands along the lower Mississippi, for this question was included in the larger question of boundaries. To Spanish control of the Floridas no objection was made.

The discussion of the Spanish proposition extended over many days and gave rise to much bitterness. The possession of the West had never before been questioned in Congress, and Luzerne himself had not been aware of Spain's ambitions until Miralles had communicated to him the instructions which he had received the preceding November. Luzerne knew the hopes of Congress from the instructions to Jay; but, nevertheless, he spoke to several members of the desires of Spain, from none of whom he received a favorable reply. He found that the delegates from the Southern and Middle states were firm in the persuasion that "the lands which extend from the Atlantic to the Mississippi in parallel lines from the equator belong to them, either in virtue of their charters or of divers acts of possession."²⁷ Some of the Eastern delegates were more moderate and recognized that if the Spanish should drive the English out of any part of this territory it would be difficult to get them to surrender it, but this view was not the prevalent one in Congress.

As the discussion continued, the indignation of the southern members increased to white heat. Burke of North Carolina exclaimed, "I know the force and the extent of our charters and of our rights, and if those of my constituents in the territories in question are not clear and certain, our rights on the Atlantic coast are equally obscure and doubtful, for they emanate from the same source."²⁸

²⁷Luzerne to Vergennes, January 25. (*E. U.*, XI, no. 27, new 33.)

²⁸"J'ai trouvé ceux du Sud et du Centre dans la ferme persuasion que les terres qui s'étendent depuis la mer atlantique jusqu'au Mississippi [belong to them] soit en vertu de leurs Chartres, soit en vertu de divers actes de possession. . . ." Luzerne to Vergennes, February 11. (*Ibid.*, no. 30, new 53, fol. 160.)

The committee of Congress which had been designated to treat with Luzerne based the claim of the United States to the West on four acts: the colonial charters, the treaty of Paris of 1763, the proclamation of the king of England in the same year, and the terms of the treaty of alliance with France.²⁹

The arguments were long and tedious and revealed a fundamental difference in the views of the two sides. In regard to the Treaty of Paris, Luzerne pointed out that it had ceded Eastern Louisiana and its dependencies, not to the colonies, who could not enter into a treaty, but to the king of England. Before this time France had possessed this territory and it had never been incorporated with the colonies; now Spain was merely trying to reconquer it from a nation with which she was at war. In a case of this kind, he argued, possession was the best title and Spain held it in virtue of her forces already in the country. The ambition of Great Britain, he held, had forced France and Spain again to take up arms; and as a result the whole treaty of Paris was subject to modification.

This argument did not convince the committee, which insisted that Great Britain had never acknowledged the claims of France to this country, and had gone to war and won her contention. They argued that the position of France on this question had been from the beginning a mistaken one and that the West had always belonged to the colonies in virtue of their charters.

The charters presented a difficult problem and one on which there was destined to be no agreement. Luzerne declared that there could be no binding force in such documents unless they were backed by actual possession. He remarked that they had been carelessly drawn, and in many cases contradicted each other so that there was no

²⁹*E. U.*, XI, no. 30, new 53, fol. 190. The account of Luzerne of his discussions with this committee is the only one I have seen and this states in the merest outline the arguments of those who wished to keep the West.

agreement among the states as to just what they meant. With such a condition of affairs, he asked if a foreign power could be expected to accept them when they violated claims founded upon actual possession.

In regard to the proclamation of 1763, Luzerne remarked that he did not see how the colonies could claim any territory which was not legally theirs even under the English government. He pointed out that by this proclamation the royal governors were forbidden to make any grants west of the head waters of the rivers flowing into the Atlantic.

The Americans replied that this provision was the source of many protests and almost universal discontent and was not accepted by the colonies. They pointed out also the provision in the proclamation that the act should not contradict the grants of the colonial charters. The reservation, they declared, was for the protection of the Indians, and was not a limitation of the rights of the colonies. Congress would likely pursue the same policy, they asserted, and it had the right which previously belonged to the British government to buy these lands to the exclusion of any other power.³⁰

The fourth point of the argument of the committee that the treaty of alliance with France guaranteed to the United States the possession of the West was met by a flat denial from Luzerne. In this he was acting in accord with Vergennes's interpretation of the treaty: that France guaranteed the United States as they actually were at that time with such other territory as they could conquer.³¹ To this contention the Americans made no objection and the matter was allowed to drop.

These arguments produced no results and the opinions of each side remained unchanged. Luzerne claimed that the United States had no right to these territories, because they had never held possession of them, and could

³⁰It is curious that the members of this committee did not point out the provision of the proclamation which declared that the reservation was "for the present."

³¹See Vergennes's instructions to Luzerne, p. 151.

make no claim in virtue of the sovereignty of Great Britain, a sovereignty which they had renounced.³² Spain, however, went further, and demanded that the states refrain from all settlements or conquests in the West, and leave the whole Mississippi Valley to her possession.³³

The questions of the Floridas and the lands along the lower Mississippi were put into the background by the great contention over the West, and even the navigation of the Mississippi received little attention. The Floridas Congress was willing to concede to Spain; and it could offer little objection to Spanish conquests on the lower Mississippi. Galvez had already gained possession of Natchez, and the Spaniards hoped he would extend his conquest farther to the north. Luzerne was beginning to discuss the purchase of these territories when news of the victories of Galvez arrived.³⁴ Congress realized that the United States could not drive Spain from territories which she had conquered, and all claim to West Florida was given up.

Only one matter connected with the Floridas aroused any difference of opinion. Congress had fixed the boundary of the Floridas in accordance with the proclamation of 1763; but Spain wished to extend it farther north. The question, however, remained an open one until after the Revolution was over.³⁵

Luzerne himself admitted that his arguments had not produced a great impression on Congress, and he advised

³²This whole argument is reported in Luzerne's letter to Vergennes of February 11. *E. U.*, XI, no. 30, new 53, fol. 190.

³³*Journals of Continental Congress* (Hunt ed.), XVI, 115.

³⁴Luzerne to Vergennes, February 11. (*E. U.*, XI, no. 30, fol. 53); March 13 (*ibid.*, no. 33, fol. 79); March 18 (*ibid.*, no. 35, fol. 87.)

³⁵"La Cour de Madrid desira peut-être de leur donner plus d'étendue au nord audela du trente unieme degré de latitude; mais le Congres est d'opinion que Sa Mte Cathe trouve d'autant plus d'avantage dans la Fixation presente que les florides ne s'étendoient du coté du nord est sous la domination Espagnoles que jusqu'a la Riviere St. Jean tandis que la proclamation leur assignoit la Riviere St. Marie pour limite actuelle." Luzerne to Vergennes, February 11, 1780. (*Ibid.*, XI, no. 30, new 53, fol. 190.)

that if Spain wanted the territory in dispute she had better seize it. Within a month news reached Philadelphia that Spain held all the lower Mississippi and Miralles had this report published in the papers with the intimation that Spain would hold it.³⁶ This report still further aroused indignation in America. It was objected that the conquest of a small corner of a vast region did not give a just claim to the whole extent of territory. If such an argument should be conclusive, it was urged, the conquest of Clark had already given the United States title to the whole valley.³⁷

There were also other sources of indignation. Many people held grants of land in this region, and they complained that they were being robbed.³⁸ This complaint gave Congress a new ground on which to base its contentions. It now came forward with the claim that the title of the United States was good by right of conquest and occupation. This occupation went back several years and, it was urged, gave the republic a priority of claim over the Spaniards. Luzerne attempted to evade this reasoning by stating that the settlements were made by the authority of the British crown, and as such were still subject to conquest.³⁹

³⁶Luzerne to Vergennes, March 13. *E. U.*, XI, no. 33, fol. 79.)

³⁷"Le Ciel veuille nous préserver . . . de l'idée d'une contestation avec l'Espagne, mais vous conviendrez que pour avoir conquis un angle de terre voisin des bouches du Mississipi et de la Riviere Iberville cette Puissance n'est pas en droit de dire qu'un Pais de cinq cent lieux d'entendre est tombé ausson pouvoir et de s'en attribuer la Souveranete. J'ai deja entendu parler de donner des renfort au Colonel Clarke pour la mettre en etat de conquerir de son et vous voiez lesconsequences de ce sisteme." Luzerne's account of a statement by Mathews, a delegate. *Ibid.*

³⁸Land had been granted by the several states, and there were companies organized to exploit these grants. *Ibid.*

³⁹Luzerne answered that the American occupation did not give any more right to the subjects of the thirteen states than it would have given to France, to Poland, or to Germany, if after the Peace of Paris the French, the Poles, or the Germans had settled in that part of ancient Louisiana. *Ibid.*

Miralles was greatly worried by the tone of Luzerne's negotiations, and began to doubt the influence of his friend. Luzerne had suggested that the two proceed boldly to force through the wishes of Spain, but Miralles would not agree to this. He ridiculed the claims of Congress but insisted that he must wait for further instructions. He finally asked Luzerne to take no further part in the negotiations, for "it would pain him to see an affair of particular interest to the king treated by another than himself."⁴⁰ Soon after this the Spanish agent died, begging Luzerne not to interfere again in the relations of his country with Congress.⁴¹

When the report of Luzerne on his conference with the members of Congress reached Vergennes, the latter replied in a way notable for its moderation. He spoke highly of the justice of Congress in leaving the Floridas to Spain and ordered Luzerne not to give any ministerial views of the points in controversy. He expressed great fear that the question might cause much trouble between the two countries, and asked Luzerne to be careful of the feelings of both allies of the king. Altho he still felt that Spain had a right to conquer the territory in question, he admitted that the Americans had some cause to be angry. He hinted that the question would likely be settled by the forbearance of Spain, who would, probably of her own free will, surrender all claim to the lands east of the Mississippi, and would also allow the Americans some right to navigate the river. He felt that if the Americans would only be easy with Florida Blanca, they would likely get what they wanted.⁴²

⁴⁰*E. U.*, XI, no. 33, fol. 79.

⁴¹Luzerne to Montmorin, May 7. (*Esp.*, 599, no. 16, new 25.) Luzerne says that Miralles had explained his motives to the court of Spain. What these motives were can probably be learned only from the Spanish archives.

⁴²"Ce n'est pas à nous à décider cette question et la prudence nous fait un devoir d'autant plus stricte de ne pas articuler d'opinion à cet egard. Sans être provoqué que si l'Espagne veut conserver les terrains

Luzerne ceased formal negotiations with Congress early in 1780; but he could not refrain from private efforts on behalf of Spain. He first approached the president of Congress, Samuel Huntington of Connecticut, and his friends. He succeeded in arousing their jealousy of the West by calling attention to the great immigration which would inevitably set in from the East to these fertile valleys. He declared that the possession of the Mississippi Valley would never be a source of strength to the United States, but would cause constant friction with Spain.⁴³

He used again the arguments against the legality of the American claims, and felt that he had gone far towards winning support for his favorite project. He tried next the delegates from New York, New Jersey, Pennsylvania, and Delaware. These states had little interest in the western lands, and he felt he could count on their support. He found them in a state of indifference but unwilling to take a decided stand against the wishes of the other states. Even Virginia showed no great hostility to the projects of Luzerne, for the County of Kentucky had just declared its independence, and in this they thought they saw the beginning of the dissolution of the states.⁴⁴

contestés Elle donnera certainement de l'ombrage aux Americains tant-disque cette Puissance prendre de l'humeur. . . . Si je suis bien informé le Ministre espagnol n'est pas très éloigné d'abandonner aux americains les rives orientales du Mississipi au dela des florides et même de leur accorder une navigation quelconque sur ce fleuve." Vergennes to Luzerne, June 3, 1780. (*E. U.*, XII, no. 7, fol. 61.)

⁴³Luzerne to Montmorin, May 12. (*Esp.*, 599, no. 49, new 106.)

⁴⁴Luzerne to Vergennes, June 11, 1780 (*E. U.*, XII, no. 54, new 74.)
 "Dans mes intretiens avec les Individus qui les composent ceux du Nord se sont montrés asses raisonnables et sont convenus du principe que l'ancienne Louisiane orientale étant actuellement entre les mains de l'Angleterre, les apartances ayant été cedées a la paix de 1763 l'Espagne avoit le droit incontestables d'en faire la conquête. Cette verité si claire est également reconnué par le Congrès general et plusieurs Membres de l'Etat du New York. . . ." In regard to Virginia he said that she appeared less attached than formerly to holding the West. "Ce changement est peutetre dû a une circonstance . . . c'est que les habitans des parties de cet Etat, qui sont éloignées du Siege du Government annonce dans

Maryland was pronounced by the French minister to be the best disposed of all the states to the desires of Spain. She had no interest in the West, and at least one of her delegates, Jenifer, was intensely jealous of the power of the larger states. He not only admitted the rights of Spain to conquer as much of the West as she could, but declared that she had a perfect right to conquer any of the states if she found them in British hands.⁴⁵ Here was a man who could perform valuable services for the Spanish cause, and Luzerne enlisted him at once and through him urged his arguments upon Congress.

There was, however, a strong opposition to the schemes of Luzerne. The old Junto had broken up, but the lead had been taken up by the vehement and zealous Burke of North Carolina. The two had constantly held opposite opinions and had not infrequently clashed. His opposition was of a character to arouse fear in the mind of the French minister and his fiery denunciations had doubtless terrified Miralles into silence. Burke denounced the ambitions of Spain as overbearing and unjust, as prejudicial to the rights of the states, and contrary to their happiness and tranquillity. Luzerne greatly feared that he would seize a favorable opportunity to sweep all Congress to his side and arouse it to lay claim to the Floridas as well as to the West.⁴⁶ Henceforth there were two well defined parties

ce moment des vues d'indépendance et le projet de former un état particulier." This incident, he declares, makes them fear "l'inconvenient des possessions distantes et trop étendues et la danger d'un dismembrment ou d'une dissolution de l'Etat." *E. U.*, XII, no. 54, new 74.

⁴⁵Le Maryland est l'Etat dont les sentimens sur cette matiere sont les plus raisonnables et les mieux articulés Un delegué de cet Etat, homme qui jouit d'une grande influence n'hesite point a dire que non seulement l'Espagne peut sans aucune contradiction faire cette conquête mais que n'ayant pris aucun engagement avec le Congrès si aujourd'hui elle enlevant aux Anglois l'Etat de la Georgie que est entre leurs mains." *Ibid.*

⁴⁶"M. Burke homme ardent et obstiné quoique d'ailleurs bon Citoyen regarde les projets de l'Espagne comme injustes contraires aux droits des Treize Etats et prejudiciables a leur bonheurs et a leur tranquillité

in Congress, the French and Spanish party with Jenifer for spokesman, and the opposition under the radical leadership of Burke.

The ability and enthusiasm of Burke won many delegates who had previously been friendly to the ideas of Spain. One delegate from New York told Luzerne that he could, without any complaint from his constituents, renounce in favor of France Canada and Nova Scotia because they were not included in the charters of the states; but if he should vote to surrender Eastern Louisiana, he would expose himself to the charge that he had sold the interests of the southern and middle states for money, and of having violated the sacred laws of the union in sacrificing some states for the gain of others.⁴⁷

Still Luzerne did not give up his efforts. He urged that the United States could never conquer the western territories on account of the power of Spain. He again besought Congress to trust to the generosity of His Catholic Majesty; but the only promise he could gain was that nothing should be done until Jay's report should arrive. Luzerne was not satisfied with this, for he feared that the report of Jay's mission would produce more ill feeling, and he did all he could in advance to discount its effects. But while he was urging the Americans to conciliation, he was trying to get Spain to conquer the West.⁴⁸

In the midst of these discussions the project for the conquest of Canada was revived. This time there was a coalition between the North and South, for New England,

et si les relations de M. Jay donnent lieu au Congres de faire quelque alteration a son ultimatum. je crains toute de la vehemence de ce Délégué." *E. U.*, XII, no. 54, new 74.

⁴⁷*Ibid.*

⁴⁸"Dans cette état des choses je crois que la Cour de Madrid ne peut mieux faire que de poursuivre la conquête qu'elle a commencée et d'exercer sur les Pais nouvelement soumis a sa Domination tous les Actes de souveraineté de Jurisdiction et de possession qu'elle jugera les plus propres a detruire, dans l'esprit des Americains l'espoir chimérique qu'ils ont conçu de les conquerir sur l'Angleterre ou du moins de les acquerir par le Traite de paix." *Ibid.*

in the hope of getting some part of Canada, was willing to support the southern pretensions. As a result of this combination Luzerne was left without the support of any section.

The British aided Luzerne in his efforts to break this coalition between the two sections. They showed great harshness towards the North and prepared to defend Canada against any assault.⁴⁹ The southern states were the object of their concern and they sought to win them over by the charge that their northern compatriots had deserted them. It was their aim to hold the three southern states even tho the others should succeed in maintaining their independence. These southern states were in the hands of the British army and it appeared impossible for Congress to recover them.

In spite of the fact that their states were in the hands of the enemy, the southerners kept up their representation in Congress; and many, expelled from their homes, came to Philadelphia to get assistance against the enemy. Luzerne thought this a favorable moment to get them to yield their claims in return for Spanish assistance and sought to push his measures regardless of the position of Congress.⁵⁰ He called first on Governor Rutledge of South Carolina, who, he found, had no suspicion of the ambitions of Spain. He was totally ignorant of the points of difference between Congress and the court of Madrid, but it had never occurred to him to surrender the western lands.⁵¹ When he learned that Spain laid claim to the east bank of the Mississippi and had already attempted to possess it,

⁴⁹Luzerne to Vergennes, June 24. (*E. U.*, XII, no. 118, fol. 396.)

⁵⁰Luzerne to Montmorin, July 11. (*Esp.*, 599, no. 182.)

⁵¹Rutledge asked Luzerne if Spain did not want the Mississippi as far as the thirty-first parallel, but spoke with great confidence of her good intentions. He said that the Spanish governor at New Orleans had replied to a request for help in a way to convince the Carolinians of the sincere interest which His Catholic Majesty had in the preservation of their independence. Luzerne to Vergennes, August 3. (*E. U.*, XIII, no. 90, fol. 224.)

his attitude became at once suspicious and even hostile. He insisted that the southern states would never agree to any such conditions; and that if Spain attempted to extend her sovereignty over these regions, she would expose herself to perpetual war. "Congress cannot see without jealousy," he exclaimed, "another nation in possession of this territory with power to incite the savages against us and to expose our frontier to continual invasion." If such principles were just, he argued, Spain would have a right to conquer Canada as well in spite of the danger it would bring to the United States.⁵²

The discussions between Rutledge and Luzerne followed the lines usual in the debates on this subject. Luzerne made more emphatic the loss of population which the older states must surely suffer if the West were incorporated into the union. He declared that the balance of power would surely shift beyond the mountains and finally the government itself would be directed from the banks of the Mississippi. Rutledge replied that there was no danger, for the West should be formed into separate states, entirely independent of the East or confederated with the older states on terms of equality.

The attitude of Rutledge is typical of the state of public feeling among patriotic Americans. He did not realize that Spain had any interest in the West, nor did he believe that she had any right to it. Eastern Louisiana had been for many years recognized as a part of the colonial domain, and it seemed incredible that another power could have any claim to it. The feeling of the country was being reflected in Congress, and this body took a definite stand on the question of the West in its instructions to Jay.

Against the historic belief of the American states was opposed the jealousy and greed of Spain. Greed and jealousy both were there; that insatiable greed for land and wealth that had been the curse of the Spanish monarchy; jealousy that feared the rise of a new power which might

⁵²*E. U.*, N.H., no. 90, fol. 224.

attain a degree of prosperity and strength that would rival her own. Jealousy in this case was stronger than greed, but perhaps it was a jealousy not unmixed with fear. Spain had no need for the fertile plains of Eastern Louisiana, while across the river were boundless regions of her own territories, still undeveloped and as yet hardly touched by cultivation. The east bank of the Mississippi was beginning to show traces of improvement under the labors of the hardy frontiersman; but there was not yet enough to tempt the cupidity of Spain. It was jealousy that sought to coop the new republic between the Alleghanies and the sea. It was jealousy that opposed the independence of the United States, that had dictated the proposed mediation by the terms of which Great Britain was to hold the ports that controlled the ingress and egress from the country, and it was this same jealousy that opposed the union of Canada to the young nation. This passion assumed many forms. Now it was the fear of the example of rebellion before the Spanish colonies; again it was the menace of a new power on her frontiers; then it was the desire to recover the historic empire of France; and finally it was the pretense of rendering justice to the British crown.

Vergennes had long understood this feeling of the Spanish court,⁵³ and it was one of the chief objects of his diplomacy to render it harmless. After the convention of 1779 he sought to bring his allies into a new triple alliance against the power of the British Empire. The prime object of the war, as he often declared, was to secure the independence of the United States without sacrificing any part of them. This was a big guarantee and Spain insisted upon and enforced the principle that she should be given equal

⁵³Vergennes repeatedly expressed his lack of confidence in the justice of Spain. In 1780 he declared that the principle of personal interest directs the conduct of Spain towards the United States. (*Esp.*, 598, no. 37, new 106.) He declared that it was useless to try to convert Florida Blanca to a more reasonable view, but that France must maintain her position with firmness. April 12, 1781. (*Ibid.*, 603, no. 25, new 57.) Montmorin also held this opinion. (*Ibid.*, 598, no. 110, new 321.)

advantages. From the first Vergennes had found his task a trying one; and altho he was frequently the dupe of Spain, he strove faithfully to fulfil his obligation to both his allies. The exclusive navigation of the Mississippi was immensely valuable in the eyes of Spain in order to insure her control of the Gulf of Mexico; but Vergennes did not see how the right to navigate this river could be of any use to the sparsely populated regions of the West. His wish to restrain the Americans from a spirit of conquest in the West can in no sense be taken as a decision against the rights of the states to their western boundaries. It did not mean that he was seeking to give this region to Spain, for at the same time he asked for his other ally only the province of West Florida which was guaranteed to her by the treaty of alliance.

The acts of Luzerne can not be taken as representing the will of his court. Vergennes knew nothing of the West and as a result he sometimes fell a victim to misrepresentations. Luzerne had been instructed to look after the interests of Spain, and he attempted to do so with more ardor than discretion. In these instructions he found reference to some "lands on the Mississippi conquered by the English" and directions to "prevent encroachments,"⁵⁴ which seemed to fit into the purpose of Miralles and he acted accordingly. In this matter Luzerne plainly exceeded his instructions which did not authorize him to do anything contrary to the wishes of Congress; and Vergennes later

⁵⁴Vergennes wrote that as there were some lands on the Mississippi conquered by the English, of which they would probably be dispossessed, their occupation would likely cause contentions between Spain and the United States. On this account he asked Luzerne to try to get the boundary fixed in a "*maniere claire, précise, et invariable*." Also he asked him to use his influence with Congress to get it to "*Empêcher les Provinces du Sud de se laisser aller à l'esprit de Conquête*." These instructions clearly refer to the lands along the lower Mississippi which Spain was preparing to conquer. In regard to the whole question he wrote, "that he was ignorant of the rights of the states." Vergennes to Luzerne, July 18. 1779. (*E. U.*, IX, no. 41.)

instructed him definitely not to push the ambitions of Spain.⁵⁵

When the contest over Eastern Louisiana became acute, Vergennes again refused to interfere more than to advise the Americans to appeal to the generosity of the king of Spain. He frankly admitted that he did not know the merits of the case but expressed his satisfaction with the liberality of the Americans in leaving the Floridas to Spain.⁵⁶ As a matter of law he expressed the belief that Spain had a right to conquer Eastern Louisiana from the British; but he urged his minister not to interfere or even to express an opinion on the subject. He realized that it was a delicate question, and that if France wished to keep the good will of both her allies she must not take part in their disputes. All he authorized Luzerne to do was to try to persuade Congress of the justice of the Catholic King.⁵⁷ All the privately expressed opinions and public despatches of Vergennes indicate a strong interest in the welfare of the American republic.⁵⁸ He was willing to reward Spain for her services, but he never offered her more of the

⁵⁵See p. 163. That the policy of Miralles was new to him and a complete surprise, he was frank to confess and he might well have assumed that his master was as ignorant as he of the wishes of Spain.

⁵⁶He urged that the Americans could get more out of Spain if they said nothing of their rights, and in this he was probably not mistaken. Vergennes to Luzerne, September 25, 1779. (*E. U.*, X, no. 38, fol. 126.)

⁵⁷See p. 163, note 42. After the death of Miralles left the care of Spanish interests in the hands of Luzerne, Vergennes wrote, "... mais le reserve que je vous recommande M. ne doit pas vous empêcher de profiter des occasions que l'on fournit pour porter le Congres à prendre confiance dans le Roi Cath. et à traiter Sans prevention la question relative aux terrains situes sur le Mississipi." August 7, 1780. (*Ibid.*, XIII, no. 8, fol. 101.)

⁵⁸An example of Vergennes's care for the interests of the United States is shown in a particular project to Lafayette in which he advised him of the course America should take. He suggested helping Spain conquer the Floridas, but he urged that the Americans should drive the enemy as far as possible from their borders. He declared that there would be great danger to the republic if Great Britain were left in possession of any part of America. And still he asked nothing for France. Doniol, *Histoire*, IV, 318.

American continent than the Floridas. On the other hand he always insisted upon as the first fruits of the war, the independence of the United States in their fullest extent. To justify to Vergennes the American right to the Mississippi was to insure his best efforts to secure it, and so it was with other questions. And this determination to secure the full rights of his ally remained his to the end.

CHAPTER IX

TRIUMPH OF THE ANTI-GALLICAN PARTY.

The efforts of Luzerne had left Congress in a state of indecision and the direction of further negotiations at Philadelphia hung upon the success of Jay. If Spain showed a favorable demeanor towards the new nation, her agents could hope for many concessions; if she frowned upon its ambitions, the work of bringing about an agreement must be begun again. Under these conditions all factions waited anxiously for news from Spain. Some hoped for a message recording failure; but the more moderate element in Congress expected an account of mutual concessions. Luzerne feared that nothing would be accomplished and did his best to prepare Congress for such intelligence. He knew from Miralles that the American demands could not be granted, and he feared that Spain would reject all overtures for an alliance.

The dispatches of Jay, giving an account of his activities during the spring of 1780, reached Philadelphia in August¹, and were not so unfavorable as Luzerne had feared. The demands of Florida Blanca for the exclusive navigation of the Mississippi were not unexpected, and his suggestion for the settlement of the western boundaries appeared so vague that no one could understand them, altho the intention of Spain did not go beyond securing enough of the eastern bank of the Mississippi to control the navigation. He had mentioned Cape Antoine and another cape with the name blank². Where Cape Antoine was no one knew; and there were various opinions as to what the other cape might be. No one could say in what direction the line was to be drawn, but Luzerne suggested that it was a meridian drawn as far as Spain should wish

¹Journals of Continental Congress (Hunt ed.), XVII, 727, 737, 749.

²Jay to Congress, (Wharton, *Dip. Cor.*, III, 724.)

to prolong it³, and this was the occasion of much more discussion. If the line extended as far as Lake Michigan, it was declared that all the western possessions of the southern states would be cut off and their boundaries greatly reduced.

The prospect of such an arrangement aroused once more the southern delegates. Even those who had shown friendliness to the plans of Luzerne went over to the other side. Among these was Jones of Virginia, who had previously informed the French minister that he regarded the ambitions of his state as a "cause of feebleness and ruin." He now complained that the greed of Spain would deprive his state of the richest part of her patrimony, and to that he declared he would never submit. Furthermore, Spain could never control this territory, he asserted, for the people who live there would never endure her yoke. Jones declared that Cape Antoine was fifteen leagues above the mouth of the Ohio, and that if Spain should get this concession, "our most beautiful territory will be threatened with invasion; we shall see ourselves despoiled of the lands washed by the Ohio and the rivers Cheroкас [Tennessee] and Cumberland which flow through and water the richest country of the continent [we shall see ourselves despoiled of] the numerous population who possess it; and those

³"On a cherché le premier cap. Quelques délégués étoient d'opinion qu'il s'agissoit de la pointe la plus occidentale de l'Isle de Cube, et dans cette hypothèse le Congrès a cherché a donner diverses interpretations a une designation aussi obscure. L'on a demandé dans quelle direction la ligne seroit surée et lorsqu'il a été compris quelle devoit former une medidienne, on a recherché jusqu'a quelle hauteur l'Espagne entendoit la prolonger si c'est jusqu'au lac Moschigan. Tous les Etats du Sud seroient reduits, a l'on dit a des sacrifices qu'ils ne feront jamais, et la Virginie, le plus puissant et le plus ambitieux de tous perdrait le plus à cette arrangement aussi cette opinion a été rejetée bien loin." Luzerne to Vergennes, August 25, 1780. (*E. U.*, XIII, new 150.) According to Lieutenant Ross's map (published in London, 1772) Cape Antoine was situated on the west bank of the Mississippi River, about fifty miles above the mouth of the Ohio. I have this information from Professor C. W. Alvord.

whose labors have made it valuable, will be forced to abandon it."⁴

On the question of the navigation of the Mississippi Jones showed himself equally obstinate. His personal feelings, he admitted, favored conceding it to Spain, but the instructions of his state were different and he must obey them. This river and the St. Lawrence were the only natural outlets to the Mississippi Valley, he declared, and the people settled there had so long enjoyed the use of both that they would not consent to be deprived of them.

Luzerne, however, resolved once more to take up the cudgels for the court of Madrid. He declared that since Spain held both banks of the river there was nothing for the people of the West to do but to submit. As for the boundaries, Spain had as good a right to conquer this part of the British Empire as had the states. He advised, however, that if Congress wanted anything it had better throw itself on the generosity of the Spanish King.⁵

Jones was not at all satisfied with the position of the French minister and sought to argue against it. He observed that, if Spain had a right to conquer the western ter-

⁴After this plea Jones became more defiant and continued: "Nous n'avons pas la force necessaire pour obliger ces colons a s'expatrier d'une terre defrichée par leurs mains et arrosée de leur sueur. *E. U.*, XIII, new 150.

⁵"J'ai objecté . . . que l'occupation seule ne constituoit pas de droit que la Cour d'Espagne mettroit, lorsqu'il lui plairoit un frein aux excursions de ces Colons, quelque nombreuse que fût leur population qu'elle avoit conquis les forts Anglois sur le Mississippi qu'elle en avoit elle même eleve d'autres et qu'elle commanderoit tellement la navigation du Mississippi que tout leurs efforts ne pourroient la leur faire partager: Qu'il ne falloit donc pas songer à s'en emparer comme d'un droit même à la demander comme une condition necessaire que de pareilles pretentions ne feroient qu' indisposer la Cour d' Espagne tandis qu'en lui demandant cette liberté de naviguer comme une faveur et avec les restrictions necessaires pour empecher la contrabande on devoit esperer de la générosité de Sa M. Cathe quant aux limites de l'Ouest qu'il voyoit comme moi que l'Espagne étoit en droit de s'emparer de tout ce qui apartenoit a l'Angleterre en vertu du Traité de Paris que je ne pouvois dire avec precision quelles étoient ses vues actuelle mais que je pensois qu'elles ne pouvoient s'entendu au dela de ce que nous avons possidé au du posseder a la rive gauche du Mississipi." *Ibid.*

ritories of the country, it had an equal right to attack any place then in possession of the English, such as Georgia, South Carolina, or New York.

To this view Luzerne fully agreed, but replied that the friendship of Spain was such that she would make no unjust demands. He returned, however, to his suggestion that Spain would probably want the east bank of the Mississippi and he urged that Congress should grant the request, relying only on the generosity of His Majesty to do what was just to the United States.

With the demands of Luzerne there came a division between him and the French party in Congress, and there came also a closer drawing of issues. Before this, Congress had been unwilling to refuse the more extreme demands of Spain; but it now felt independent and began to suspect the intentions of France.

At this time Jenifer was absent and his aid was sorely needed by the French minister. With the defection of Jones there was no one on whom to rely and he was compelled to go in person to learn the designs of the anti-Gallicans. The committee told him that the instructions to be given to Jay on the question of the Mississippi would be such as Spain would accept; but the members refused to commit themselves regarding the boundaries.⁶ Luzerne was not content and went to other members, whom he found agreeable enough in conversation, but who persisted in opposing his plans in Congress.⁷ At the same time there was apparent a movement among the northern members to support the pretensions of the South, and Luzerne conjectured that they were planning another attack on Canada. This belief soon became a certainty and Luzerne learned that that country was to be sought as a pledge for the evacuation of the southern states. He did not believe, however, that the English would be willing to make the exchange, and he

⁶Luzerne to Vergennes, August 25, 1780. (*E. U.*, XIII, no. 73, new 150; *Esp.*, 600, no. 8, new 108.)

⁷*Ibid.*

thought they would attempt to unite the South with the Floridas to form a new colony.⁸

Deprived of any active assistance from the Americans, Luzerne enlisted the services of his secretary Marbois and the two planned to curb any radical policy that should get free rein in Congress. The two found it difficult to get definite information, and Congress itself, torn by the fear of losing the assistance of Spain and the desire to hold the Mississippi, was undecided what course to take.⁹ It soon became clear, however, that this body would not yield. A delegate one day informed Luzerne that Congress was disposed to grant Jay greater discretion in regard to the Mississippi river; but on further discussion he revealed that this discretion would allow only a more systematic regulation of contraband.¹⁰

On the question of the disposition of the western territories there were numerous opinions. Many members thought the report of Jay was so vague that they could take no action on it and wished to wait for further advices.¹¹ Luzerne regarded this delay as favorable to the Spanish interests; and he and his secretary strained every nerve to win over a majority of Congress. In these negotiations he labored under a great disadvantage in having no precise instructions from Spain and in not knowing the exact limit of her pretensions. Eagerly he searched the papers of Miralles, left in the hands of the dead Spaniard's secretary, but he found no trace of instructions from Florida Blanca. Anxiously he awaited the arrival of a new Spanish agent, who could furnish definite information.¹² The legal status of the West also claimed the attention of the learned Marbois. With members of Congress he

⁸*E. U.*, XIII, no. 74, new 152.

⁹*Ibid.*, XIII, no. 80, new 186.

¹⁰*Ibid.*, no. 78, new 176.

¹¹Luzerne to Vergennes. (*Ibid.*) Marbois to Vergennes. (*Ibid.*, XIV, no. 88, new 14.)

¹²Luzerne to Vergennes, September 19, 1780. (*Ibid.*, XIII, no. 80, new 186.)

went over the charters of the different states, compared them and pointed out that they were "contradictory, inconsistent and ridiculous." In them he found imaginary boundaries and designations of countries that never existed. Under his logic and ridicule the claim of immemorial right was abandoned and Congress took its position on the ground of occupation and possession.¹³

Borne down by the arguments of the Frenchman, several members of Congress indicated their willingness to accept a compromise. They suggested the cession to Spain of the lands between the Mississippi and the right bank of the Apalachicola, as far north as the river Tennessee.¹⁴ In these overtures Luzerne had little faith; for they were bitterly attacked by the southern states, which raised the cry that Spain was seeking their dismemberment, and many northern delegates, anxious to gain Canada, supported their contentions. One member brought to memory an old resolution that the thirteen states were indissolubly united, and argued from this that Congress must maintain the right of the states to all their possessions and in no case could it allow any diminution of territory.¹⁵ He demanded that it declare in precise fashion the exact limits of the various states and draw up a mutual guarantee to maintain them. Another delegate, in his anger, proposed that, in case the Spanish court did not admit the American claims, Jay should be ordered to break off negotiations and quit the country. Wiser counsels prevailed and neither of these propositions passed. Congress did not wish to lose the aid of Spain by displeasing her but it put faith in Jay's suggestion that if it remained firm she would "finally be content with equitable regulations."¹⁶

¹³Marbois to Vergennes, September 30, 1780. (*E. U.*, XIII, no. 85, new 211.)

¹⁴Luzerne to Vergennes, September 8, 1780. (*Ibid.*, XIII, no. 78, new 176.)

¹⁵*Ibid.* Luzerne states that these were the motives but they are not given in any of the published journals of Congress.

¹⁶Wharton, *Dip. Cor.*, III, no. 725.

The decision in regard to new instructions to Jay hung fire until the beginning of October. Every day was expected to bring a letter giving fuller and more definite explanation of Spain's proposed boundary. Congress itself appeared to the French embassy hopelessly divided on the question. Some wished to follow Jay's advice to remain firm; others insisted that the states should make reasonable sacrifices for the common good. So opposed were the opinions that many would not discuss them at all for fear of violent and bitter debates.¹⁷

Jay had asked for definite instructions, and at last Jenifer insisted that they be given him. "Decency, the regard due to Spain, and the interests of the states," he said, "demand that we should consider this affair without delay."¹⁸ He then moved that Jay be instructed to promise Spain satisfaction on the points in dispute,¹⁹ and defended his proposition in a lengthy speech, describing the failures of the last campaign and the necessity of help from Spain if independence were to be secured.²⁰ Many speeches were made in answer to his argument and the whole question of the boundaries and the navigation of the Mississippi was again gone over. Jenifer's opponent's discoursed on the sacred sanction of the charters, and declared the necessity of conserving the rights of the states if unity and prosperity were to be attained. They spoke of the generosity and fairness of the king of France in contrast to the ambition of Spain and her evident intention of taking advantage of their distresses. One speaker claimed that "if Spain had the right to make the conquest of all that belonged to the king of Great Britain, His Catholic Majesty, by virtue of this principle, would form claims on Georgia and South Carolina which were then in the hands of the British." Others asserted that if they abandoned their fellow citi-

¹⁷Barbé de Marbois to Vergennes, October 10, 1780. (*E. U.*, XIV, no. 88, new 14.)

¹⁸*Ibid.*

¹⁹*Ibid.* The published journals of Congress do not give this motion.

²⁰The whole debate is described in Marbois to Vergennes. (*Ibid.*)

zens, Spanish rule would prove so oppressive that revolution would soon break out. Especial emphasis was also laid on the duty of Congress to protect the interests of the states that were then invaded, and it was heralded about that if the southern delegates assented to the cessions demanded "they would answer for it with their heads."²¹ The arguments of Jenifer were feebly supported by the other members and the motion was finally lost.

On October 4 Congress unanimously²² passed resolutions to adhere to its former instructions and two days later appointed a committee consisting of Madison, Sullivan, and Duane to draft a letter to Jay.²³ Of this committee Marbois judged Madison to be the most moderate, but he was bound by instructions and could not recede from the pretensions of his state.²⁴ He was willing, however, to talk over the question with the French envoy, who attempted in every way to get him to tone down the letter to Jay. Madison was conciliatory in his attitude towards France, but he remained firm on the policy approved in Congress.²⁵

After the resolutions of October 4, there appears to have been only one advocate of concession in Congress, Daniel of St. Thomas Jenifer, who had for nearly two years been a most earnest supporter of the Spanish alliance and had throughout shown entire willingness to grant any sacrifice to obtain it. Before he had come to represent his state at Philadelphia he had, as president of the senate of Maryland, attracted the notice of Gerard and the two had become firm friends.²⁶ Upon entering Congress in November, 1778, he at once identified himself with the French party

²¹*E. U.*, XIV, no. 88, new 14.

²²*Journals of Continental Congress* (Hunt ed.), XVIII, 900. Marbois says that Congress passed this resolution by a plurality of six votes. *E. U.*, XIV, no. 88, fol. 14.

²³Marbois to Montmorin, October 17. (*Esp.*, 601, no. 10, new 63.)

²⁴Marbois to Vergenes, October 21. (*E. U.*, XIV, no. 92, new 29.) To Montmorin. (*Esp.* 601, no. 11, new 71.)

²⁵Marbois to Montmorin, October 17. (*Esp.*, 601, no. 10, new 63.)

²⁶*Journals of Continental Congress* (Ford ed.), XII, 1141.

and soon became its most active and radical member. When the designs of Spain to get control of the West became noised about and it became apparent they received the support of the French minister, many of the old adherents of Gerard, men like Jay and Gouverneur Morris, determined upon an independent course. Not so with Jenifer. He became an ardent enthusiast for any concession that would help to gain Spanish assistance or would please the king of France. His views do not appear to have been regarded as unpatriotic by his constituents at home or his colleagues in Congress. He became the center of opposition to the combination of Samuel Adams and the Lees to push New England interests in Canada and Virginian ambitions in the Mississippi valley. He was the first representative of the small states party and drew to his side all factions jealous of the dominance of the "Junto."

Maryland had no interest in a colonial policy and dreaded the dominance of her southern neighbor. The navigation of the Mississippi and the control of its valley meant no increase in her resources but only an added expense to conquer them. Delaware, Pennsylvania, New York, and New Jersey were likewise circumscribed in their limits and never displayed much enthusiasm for acquisitions to the territory of their sister states. At the behest of Gerard, Jenifer had led the fight against the demands of Congress for the right to navigate the Mississippi as expressed in Jay's first instructions. In the winter of 1779-80 when Luzerne and Miralles were urging acquiescence in Spain's pretensions to the ownership of Eastern Louisiana, Jenifer had been their spokesman and had continued the advocate of Spain during the second struggle over the policy of Congress towards the West.

Not at all daunted by his defeat in the resolutions of October 4, Jenifer planned with Marbois²⁷ to renew the fight when the committee should report its draft of the letter to Jay.²⁸ They sought to influence the members of Con-

²⁷Luzerne had left Philadelphia on his vacation.

²⁸Marbois to Vergennes, October 10. (*E. U.*, XVI, no. 88, new 14.)

gress both by private conferences and by arguments delivered before the whole assembly. They were still handicapped, however, by their inability to speak authoritatively on the position of Spain. The secretary of Miralles had been left as chargé d'affaires in Philadelphia and he had only a vague notion of the desires of his court.²⁹ He was frightened, however, at the stand of Congress and begged Marbois to exert his influence in behalf of more moderate measures. With different members of Congress different arguments were employed. To the more radical there was pointed out the need of an alliance with Spain and the danger of displeasing her if the claims of Congress were based on pretensions of right. To them it was urged that the United States should throw themselves on the magnanimity and generosity of the Catholic king.³⁰ To those who were very friendly to the French king and yet suspicious of Spanish ambitions, Marbois urged concession because it would please His Majesty, and this argument he thought, had a powerful effect. Throughout the whole war there were frequent expressions of gratitude for French aid; and on these the French representatives, tho often disappointed, depended for substantial acts of gratitude. In this case however, Marbois received more than ordinary encouragement and felt confident of success. Samuel Huntington himself, the president of Congress and a New Englander, expressed alarm at the prospect of incurring the enmity of Spain and promised to urge moderation in the new instructions to Jay.³¹

At the solicitation of Marbois and with his help Jenifer undertook to prepare a memoir which should set forth the pretensions of Spain in the most favorable light and answer all the arguments of the opposition.³² The result of his labors is the clearest and most convincing exposition of

²⁹Marbois to Vergennes, October 17, 1780. (*J. U.*, XIV, no. 91, new 23.) Marbois to Montmorin, October 17, 1780. (*Esp.*, 601 no. 10, new 63.)

³⁰*Ibid.*

³¹*Ibid.*

³²*Ibid.*

Spain's position that appeared during the revolution.³³ He goes over all the old questions of the validity of the charters, the treaty of 1763, the necessity of a well-defined frontier, such as the Mississippi, and all the legal and diplomatic questions involved. In this document the Maryland delegate argued that those interested in the question ought to have no voice in the decision; but no state would consent to remain defenseless while its claims were set aside. The most powerful point of his argument, however, was for concessions to win the alliance of Spain.³⁴

His legal analysis, keen tho it was, could have little effect on a body of revolutionists who held it their duty to obey the wishes of their constituents. Alliance with Spain, however, had become a vital question. Gates had been ignominiously defeated in South Carolina³⁵ and the interior of the whole region as well as the cities along the coast were in the possession of the British.³⁶ The patriot party in the South was broken up and such of its leaders as were alive and free had fled to the north. It was the time of greatest discouragement for the American cause. The American army was unpaid and unprovided for and the French king had refused to grant another subsidy or to send more troops and the French navy had for a long time rendered no service.³⁷ In the midst of this general distress, news of Arnold's treason added to the all-pervading spirit of gloom.³⁸

It was a fitting time to urge any concession to secure the help of Spain, and Jenifer made the most of his opportunity. In contrast to the reverses of the Continental army, Spanish troops were victorious on the Mississippi; and it was believed they would soon overrun the whole ter-

³³The title of this memoir was "Observations on the points contested in the present negotiations between Spain and the United States." Copies were enclosed to Vergennes and Montmorin with the dispatches of October 17.

³⁴*E. U.*, XIV, no. 91, new 25.

³⁵"*Observations*" etc. with dispatch of October 17, (*Ibid.*)

³⁶*Ibid.* Van Tyne, *American Revolution*, 301.

³⁷Marbois to Vergennes. (*E. U.*, XIV, no. 91, new 23.)

³⁸Van Tyne, *American Revolution*, 306.

ritory in dispute. Why not then, he argued, make a virtue of necessity and in return for the Spanish alliance grant that which we can never hope to conquer?³⁹ With the help of Spain he held that success was assured; without it failure was inevitable. Under the existing conditions he believed that the war carried on by Spain was more harmful than helpful to the American cause, for Spanish demands were a drain on the resources provided for by France. With the Spanish troops to attack from the south and the Americans from the north, he argued the British would be between two fires and would soon be driven out of the country.⁴⁰

How are we to secure this needed assistance? he asked. There was only one way possible: to grant the Catholic King Eastern Louisiana and the exclusive navigation of the Mississippi. In this opinion he was backed up by the powerful influence of the French embassy and he felt that Congress must agree to make the concession.⁴¹

The opposition to surrendering American interests in the West, strangely enough, was led by New England, while the southern states were rather inclined to give up their claims. The eastern delegates argued that since Jay was on the ground his opinion should be followed and they were for remaining firm. Marbois, however, thought there were other reasons for their stand. The eastern states had never been amenable to French influence and had been the hot-bed of the anti-Gallican party. Their attitude had often before been attributed to hostility to the French alliance, and Marbois thought that this hostility was more bitter in its opposition to Spain. In these states the British power was considered broken and he believed that their leaders wished to continue the war in order to conquer Canada and Nova Scotia.⁴² Still another reason, he suggested, might be

³⁹Van Tyne, *American Revolution*, 306.

⁴⁰"Observations" etc., with dispatch of October 17. (*E. U.*, XIV, no. 91, new 26.)

⁴¹*Ibid.*

⁴²*Ibid.*

that they feared, if the ultimatum on the western boundaries was set aside, the southern states would desert them on the issue of the northern limits.

The attitude of the middle states was more moderate. New York held strongly for the former instructions on the western boundary but was willing to surrender the navigation of the Mississippi. Marbois believed that she hoped, if the right to use this river were prohibited, her citizens could then control the western trade by the way of the Lakes and the Hudson. New Jersey, Pennsylvania, Delaware, and Maryland appeared for the most part indifferent to the West and strongly anxious for the favor of the King of France and the alliance with Spain. Marbois thought that when the question came up for final decision they would all vote in favor of his projects.⁴³ Virginia, led by Madison, was inflexibly opposed to any concession. The delegates from the three southern states expressed to Marbois their opinion that Spain should be conciliated, but declared they must not vote to make any sacrifices of the rights of their states.⁴⁴

On October 17 the committee submitted its draft of a letter to Jay explaining the "reasons and principles" on which the resolutions of the 4th were founded.⁴⁵ This letter was prepared by Madison⁴⁶ and is in his handwriting.⁴⁷ It presents a masterly defense of the principles agreed upon two weeks before and answers in detail the memoir of Jennifer with a breadth of view never attained by the member from Maryland. It states simply and concisely the position of Congress, and then passes to a discussion of the

⁴³*E. U.*, XIV, no. 91, new 26.

⁴⁴*Ibid.*

⁴⁵*Journals of Continental Congress* (Hunt ed.), XVIII, 935.

⁴⁶"Mr. Madison, charged by his colleagues to show in memoir the state of the question of the navigation of the Mississippi and the possession of the lands situated on the left bank of that river, has communicated to me this writing" Marbois to Vergennes, October 21, 1780. (*E. U.*, XIV, no. 92, new 29); to Montmorin (*Esp.*, 601, no. 11, new 71).

⁴⁷*Journals of Continental Congress* (Hunt ed.), XVIII, 947.

questions involved. In his contention for the Mississippi as the western boundary Madison ignores the obsolete delimitations of the charters and bases his arguments on the cession by the treaty of 1763. "It is sufficient that by the definition of the treaty of Paris, of 1763, article seventh, all the territory now claimed by the United States was expressly and irrevocally ceded to the king of Great Britain, and that the United States are, in consequence of the revolution in their government, entitled to the benefits of that cession."⁴⁸ The sovereignty of this territory, he contended, was vested in the king of Great Britain by virtue of his position as king of the people of America. Consequently, when this sovereignty over the thirteen states was overthrown, it returned to the people. "From these principles," he asserted, "it results that all the territory lying within the limits of the states, as fixed by the sovereign himself, was held by him, for their particular benefits, and must equally with his other rights, and claims in quality of their sovereign, be considered as having devolved on them, in consequence of their resumption of the sovereignty to themselves." In answer to the Spanish claim of right of conquest, Madison replied that these conquests did not extend farther north than Fort Natchez, while the remainder of the territory had been conquered and was held by American arms. He furthermore insisted that the United States, as an independent nation, could not permit another power to conquer territory contained within its limits.⁴⁹ He defended the rights of the United States to this territory on the grounds of a national boundary and its settlement by American citizens. The right to navigate the Mississippi river Madison based on arguments the same as those advanced for the possession of the western territories, and the right of passage through the Spanish possessions he supported by appeal to the law of nations.⁵⁰ The document as a whole shows much learning and

⁴⁸*Journals of Continental Congress* (Hunt ed.), XVIII, 936.

⁴⁹*Ibid.*, XVIII, 938.

⁵⁰*Ibid.*, 945.

a thoro understanding of the principles of international law. It is clear in exposition and expresses the most subtle ideas in a simple and concise manner. In spite of the fact that Marbois considered the pretensions of the United States as set forth in this document as too ambitious,⁵¹ the letter was accepted by Congress, with the belief that it would convince Spain of the justice of the American position.⁵²

According to Marbois, however, Jay was left much discretion as to insistence on the resolutions of Congress. He was not to present them as an ultimatum, and was authorized to retract as circumstances and prudence suggested.

Altho the French representatives did not approve the stand of Congress, they recognized a spirit of moderation that promised a reasonable settlement. Marbois wrote that, if Spain acceded to the conditions laid down by Congress, her action would cause general satisfaction in America. He was not, however, sanguine of such a concession, and sought to prepare Congress for harder terms. He was handicapped in his efforts by ignorance of the full extent of Florida Blanca's demands⁵³ and felt constrained to inform Congress of his lack of definite knowledge.

The decision of Congress in these instructions to Jay marks the end of the personal diplomacy of the French ministers. Upon the gratitude of Congress and personal counsel to individual members of Congress Gerard and Luzerne had built up a powerful machine in the interests of the Spanish ambition. One by one the members of this organization had fallen away, and after the debate of October several months elapse before Jenifer's name appears in the

⁵¹Marbois to Vergennes, October 21. (*E. U.*, XIV, no. 92, new 29.)

⁵²"The president of Congress has said that he believes an impartial power will find the new instructions satisfactory for the court of Madrid." *Ibid.*

⁵³He believed, however, that Spain "had demanded of Congress at this moment that part of Louisiana which in the atlas of Damible is comprised between the Mississippi on the west, the Floridas on the south, the river Athbannus or Appalachicola on the east, and a line drawn from the sources of these rivers to the mouth of the Ohio in the Mississippi." *Ibid.*

votes of Congress.⁵⁴ With his departure the last partisan of the old French party disappears and the diplomacy at Philadelphia begins to assume the character of international relations.

This effort of Luzerne and Marbois also marks their last attempt at active intervention in behalf of Spain. Gardoqui, the successor of Miralles, had arrived and he neither gave information to the French representatives nor sought their confidence. Henceforth there is no intimation that French and Spaniard are hand and glove and Gardoqui is left free to pursue his aims. Another reason for this withdrawal from the Spanish affairs may be found in the instructions of Vergennes. He had previously declared his ignorance of American rights in the West and his fears of incurring the distrust of the United States;⁵⁵ and in consequence, he now directed his representative to cease interfering and to urge nothing against the will of Congress.

Thus by the close of 1780 the United States had received recognition in spirit as previously in fact and was no longer a mere protégé of the French monarchy. It was acknowledged that Congress could judge of its own rights and interests and was not to be dominated by notions of sentiment. Spain must seek her ends through the channels of ordinary diplomacy and the United States were henceforth permitted to work out their own destiny.

⁵⁴He is not recorded as voting until April, 1781.

⁵⁵See above, p. 170, note 54.

CHAPTER X

THE CLOSE OF THE WAR

Congress proceeded to the exercise of its new found freedom with moderation. Marbois had expressed the belief that the shifting membership of this body would sooner or later cause a change in its policy;¹ and within a few months this opinion was apparently justified. In October Congress had unanimously agreed to resolutions demanding widely extended boundaries, but these resolutions did not express the ideas of all the members, and many of them assured Marbois that they would be satisfied with narrower limits, but that it was necessary to present a united front.

There were many considerations, however, that pointed to the necessity of concession. Cornwallis now held Georgia and South Carolina and had advanced northward far enough to proclaim North Carolina a conquered province;² and it appeared that without more effective aid these three states would be lost to the union. In the north Washington was inactive, and no additional help was then expected from the French. Still another danger menaced the republic; the danger that Spain would make a separate peace with Great Britain; and early in 1781 came a letter from Jay which aroused still greater doubts as to Spanish designs. Jay had learned of Spain's negotiations with a British agent, and of her disavowal of any purpose to treat independently;³ but the agent still remained. "If they have rejected all overtures of Britain,

¹Marbois to Vergennes, October 1, 1780. (*E. U.*, XIV, no. 92, new 29.)

²Van Tyne, *American Revolution*, 324.

³See p. 143.

why is Mr. Cumberland still here," asked Jay;⁴ and his suspicions found an immediate echo in Congress.

The Americans had abandoned their claim to any territory by charter right, and now realized that their pretensions, in order to be effective, must be maintained on other grounds. They understood at last that when they came to treat for peace the enemy would surrender territory in their possession only for adequate compensation. This truth had been urged by Vergennes; and he had insisted that the first aim should be to expel the enemy from their borders;⁵ but nothing had been accomplished. Now with the British in possession of the southern states and the Spaniards active along the Mississippi, Congress resolved to retrieve itself and proposed two plans of action: an effective military campaign, and renewed efforts to obtain help from the Court of Madrid. Washington was entrusted with the military plans and prepared for energetic measures. Once more he turned his eyes towards Canada and succeeded in convincing the reluctant Luzerne of the advisability of its conquest.⁶ Luzerne admitted the desire of his court to free the French in Canada as it had freed the Anglo-Saxon colonies, and declared its eagerness to attempt any measures for the humiliation of Britain; he also wrote to Vergennes that he thought the invasion would be "practical and of great utility."⁷ Vergennes lent a favorable ear but urged that the British should first be expelled from the United States. After this should be accomplished, he declared his willingness to

⁴November 6, 1780. (Wharton, *Dip. Cor.*, IV, 148.) Cumberland was the name of the British agent.

⁵See p. 191, note 9.

⁶Luzerne to Vergennes, November 3, 1780. (*E. U.*, XIV, no. 49, new 213.)

⁷Au défaut du Siège de New York, qui paroît devoir être au dessus de nos moyens au moins pour la plus grande partie de la Campagne, une expedition contre le Canada Sera la plus agreable aux Etats de la nouvelle Angleterre, et je crois qu'elle est a la fois practicable et d'une utilité infinée." Luzerne to Vergennes, April 29, 1781. (*E. U.*, XVI, no. 62, new 137.)

support the expedition, for he regarded it as necessary for Halifax and Penobscot at least to belong "either to us or to the Americans."⁸ The project was continually discussed in Congress⁹ but military events forbade its undertaking. The advance of Cornwallis to the north threatened the central states, and thus ended the last attempt against Canada.

In the Mississippi Valley, American power was equally precarious, altho in the regions of Kentucky and Tennessee settlers from the states had occupied the land and it seemed that possession there was secure. The expedition of Clark had given the Americans a claim to a large part of the territory north of the Ohio; but the British still held posts on the Lake Shore, such as Niagara, Detroit, and Mackinac, and these commanded an extensive region. Washington felt that it was essential to reduce these posts, but he did not have the necessary military strength to do so alone, and suggested that Virginia should furnish additional aid.¹⁰

The Spaniards in this region had aroused the fears of the Americans. Their designs on Eastern Louisiana were well known, and their expeditions along the Mis-

⁸Vergennes to Luzerne, October 22, 1780. (*E. U.*, XIV, no. 32.)

⁹This measure was chiefly fostered by the New England delegates who insisted that their states would never be secure as long as Great Britain held Canada. Luzerne to Vergennes, April 29. (*E. U.*, XVI, no. 62, fol 137.) "Le penchant des delegations du Nord pour une expedition contre le Canada se manifeste de plus en plus et M Samuel Adams qui vient de partir pour l'Etat de Massachussett est toujours plein de cette idée. Les Délégués du Sud qui sentent combien il importe de ne donner lieu a aucune division en Congrès sur la matiere importante.... ont crû devoir se montrer faciles sur les pretentions de leurs Colleagues . . . mais ils ont mêmes tems annoncé qu'ils s'opposeroient de tout leur pouvoir a toute operation contre Quebec ou les autres parties Septentrionales du Canada aussi longtems qu'une parti des Treize Etats seroit invadie..." May 12, 1781. (*Ibid.*, no. 75, new 139.)

¹⁰Washington to Jefferson, December 28, 1780. (*Writings* (Ford ed.), IX, 81.)

Mississippi were of an alarming character.¹¹ Galvez had early captured the British posts on the lower Mississippi without protest; but when in 1781 the Spanish commander at St. Louis sent an expedition across the Illinois country which captured St. Joseph, there was a cry of alarm among patriotic Americans.¹² It is probable that Spain did not have any designs on the territory north of the Ohio, but her intrigues to obtain that south of this river convinced many that she was trying to get possession of the whole Mississippi valley.

In harmony with Washington's ideas, and possibly at his suggestion, two expeditions were planned against the Northwest. One was to be composed of French "habitants" along the Mississippi, under the leadership of La Balme; the other was to be made up of troops from Virginia and Kentucky commanded by Colonel Clark.¹³ La

¹¹Geo. Rogers Clark wrote to John Todd in March, 1780: "I am not clear but that the Spaniards would fondly suffer their settlements in the Illinois to fall with ours for the sake of having the opportunity of retaking both." (*John Todd Papers: Chicago Historical Society Collections*, IV, 326.)

¹²See E. G. Mason, "March of the Spaniards across Illinois." (*Magazine of American History*, XV, 457.) This account merely reflects the contemporary American fears without any real knowledge of facts. Franklin was very much alarmed at the Spanish project, fearing it was an attempt to restrict the republic to the Appalachian mountains. (Franklin to Livingston, April 12, 1782. *Writings*, Smyth ed., VIII, 425.) Jay wrote to Congress on March 12, that the Madrid Gazette after describing the expedition speaks of its importance as preventing the English from attacking St. Louis and compelling the Indians to remain neutral in the war. (Wharton, *Dip. Cor.* V, 364.) Luzerne did not know what motive the Spaniards had in undertaking this conquest. He described it as of little use and very hard to defend. He describes fully the alarm felt among the Americans. Luzerne to Vergennes, August 9, 1782. (*E. U.*, XXII, no. 8, new 24.)

¹³La Balme was a French cavalry officer who was one of the many sent over by Deane in the winter of 1776-7. Deane to Congress, October 17, 1776. (Sparks, *Dip. Cor.*, I, 42.) He was granted a passport by Vergennes and took the quality of a merchant. Lenoir to Vergennes, January 28, 1779. (*E. U.*, II, no. 32, new 54.) In granting the passport Vergennes wrote: "Le gouvernement ne pouvant avouer leur que veulent aller tenter fortune dans cette partie de l'Amérique ne peut absolument donner un titre qui con-

Balme was the first to start. He aroused the French settlers at Kaskaskia, and with a small force started towards Detroit.¹⁴ Before they could reach their destination

stiterois qu'il a connoissance de leur projet. Vergennes to Lenoir, January 29, 1777. (*E. U.*, II, no. 33, new 55.) In May Congress conferred upon La Balme the title of Lieutenant colonel of horse (*Journals of Continental Congress*, (Ford ed.) VII, 385) and in July he was made inspector general. (*Ibid.*, 539.) In October he resigned (*ibid.*, IX, 797), and spent several months in trying to get his pay adjusted. Just how La Balme got back into the American service is not clear, for in February 1778, the committee on foreign applications informed him that it would have no further use for his services. (*Ibid.*, X, 157.) We next find mention of him in the West "provided with a commission of inspector general of all the cavalry in America and with a letter of recommendation dated June 25, 1780, addressed to the suppliants by Mr. Fowler who was formerly our commandant..." Petition to governor of Virginia by inhabitants of Kaskaskia, May 4, 1781. (*Kaskaskia Records*, 237.) His activities here aroused suspicions among the Americans that he was in the employ of France (*ibid.*, 169), but he began his work at Kaskaskia. There he found the Kaskaskians full of hatred towards the "Virginians," who, they claimed, had despoiled and were oppressing them. La Balme skilfully appealed to their patriotism as Frenchmen, and promised them redress from Congress. (*Ibid.*, 181.) He sympathized with them, but since they were subjects of the United States he did not feel at liberty to make a formal request in their behalf and contented himself with speaking privately to various members of Congress. La Balme raised a force of Frenchmen which started against the fort at Detroit but was ambushed and slain. Luzerne to Vergennes, May 12, 1781. (*E. U.*, XVI, no. 75, new 139.) La Balme's expedition was of no importance in itself; it derives an interest from the fact that there was then and has been since some suspicion that he was acting to further some ambitious plans of France. (Turner, in *American Historical Review*, X, 235.) There seems to be no evidence for this assumption, and there is much to urge against it. In the French archives there is no mention of La Balme except the perfunctory one of granting him passports. Luzerne apparently did not know him, for he spoke of him in a disinterested sort of way and did not even make mention of his death. Most important of all is the fact that Vergennes did not have any designs on the Mississippi Valley.

¹⁴"Une colonie de François établié sur les bords du Mississippi dans le Pays des Illinois au poste des Kaskaskias a crû récemment pouvoir tenter une entreprise contre les Fort du detroit et sous la conduite de M La Balme: Ils ont remonté L'oubache et se sont emparés du poste des Miamis." Luzerne to Vergennes, May 12, 1781. (*E. U.*, XVI, no. 75, new 139.)

they were ambushed and La Balme and most of his little band were slain.

Clark was instructed to collect a force at Fort Pitt and to make ready for an attack on Detroit. He was then to march east and capture Niagara and after that to join with other forces in an effort to capture Quebec.¹⁵ He was slow in raising his troops, however, and before he could start events were hurrying the war to a close and the expedition never set out.

Luzerne heartily approved of the attempt of Congress to get possession of the Northwest. He called the measure a piece of "sound politics" for "if it succeeds," he wrote, "it will assure the frontiers of the thirteen states to the north." He recognized that the possession of the Great Lakes would place the Americans in a much better position to negotiate with great Britain.¹⁶ The failure to conquer these posts resulted as Luzerne had foreseen; and with the British in possession of them they long remained a fruitful cause of trouble.

The desperate condition of American affairs in the last months of the war inclined Congress once more to seek Spanish aid, and some of the southern delegates confided to Luzerne their intention to reopen negotiations regarding the West.¹⁷ They had decided to offer Spain in return for her help "one hundred miles of land on the left bank of

¹⁵Plan for an attack on Quebec. (*Papers of the Continental Congress*, 25, I, fol. 37.)

¹⁶... une expedition contre les Forts de Niagara et du detroit a été secrètement resolué. Elle doit être enterprise par le Colonel Clarke avec quelques forces quil tierara de la Virginie et avec les milices du district de Kentucke. Si elle reussit elle assurera la frontiere des Treize Etats au Nord Elles les rendra maitres de deux postes importantes et des lacs michigan, huron, Erie et Ontario qui sont dans l'etendue des limités quil se sont Fixés et cette possession leur donnera les moiens de Negocier sur un pied beaucoup plus avantageux avec la grande Bretagne." Luzerne then describes the difficulties in the way which were great enough to make him doubt of the success of the expedition. Luzerne to Vergennes, May 12, 1781. (*E. U.*, XVI, no. 75, new 139.)

¹⁷Luzerne to Vergennes, November 26, 1780. (*E. U.*, XIV, no. 89, fol. 337.)

the river" [Mississippi].¹⁸ On this question there was the same old alignment of parties; the New England states and Virginia opposing any concession, while a majority of the other delegates favored it. After much discussion a compromise resolution was passed, which authorized Jay to give up the claims of the United States to navigate the Mississippi below the thirty-first parallel, provided that the right of navigation above this line was recognized.¹⁹ No concession of territory in the Mississippi Valley was made, and it was apparent that Virginia and New England would concede no more.²⁰ Congress felt that these terms were most liberal and did not doubt that Spain would accept them.²¹ Luzerne himself believed that now Spain would accede to the treaty of alliance, if she were given control of the mouth of the Mississippi, and he ceased urging concessions upon Congress.²²

The resolutions of Congress agreeing to relinquish the navigation of the Mississippi gave new life to the negotiations at Madrid. In January Florida Blanca had demanded this as the *sine qua non* of forming an alliance with the United States; but Jay had not felt at liberty to grant it and Franklin had approved his stand.²³ In all his efforts Jay had been counseled by Montmorin, and after the ultimatum of Florida Blanca both agreed that

¹⁸Luzerne to Vergennes, December 15. (*E. U.*, XIV, no. 108, new 120.)

¹⁹Wharton, *Dip. Cor.*, IV, 257; *Journals of Continental Congress* (Hunt ed.), XIX, 153.

²⁰Luzerne thought there was a deal by which the northern states were to support Virginia's pretensions to the West in return for that state's support of the New England claim to an extended northern boundary. (*Esp.*, 601, no. 191.)

²¹Congress to Jay, May 28, 1781. *Journals of Continental Congress*, XX, 555. A resolution to allow greater concessions was unanimously defeated on August 10. *Secret Journals*, II, 468.

²²Luzerne to Montmorin, May 1, 1781. (*Esp.*, 603, no. 61.)

²³Franklin to Jay, January 27, 1781. (*Writings* (Smyth ed.), VIII, 202.)

nothing more could be done before the general settlement of peace.²⁴

When Jay received instructions allowing him to relinquish the navigation of the Mississippi below the thirty-first parallel, he attempted to reopen the negotiations with the Spanish minister. He did not reveal his instructions at once, altho he strongly suspected that the Spanish minister knew all about them. He was still opposed to the cession of the right of navigation and resolved to make one more effort to conserve it. After all, he reasoned, Spain will fight as well in our cause without a treaty as with one. To Florida Blanca he declared that "Congress views the speedy accomplishment of this union as very important to the common cause; and therefore, if Spain would consent forthwith to come into it, in that case they would gratify His Majesty by ceding to him the navigation of the Mississippi below their territories on reasonable terms." Florida Blanca showed no inclination to agree to these conditions, and argued that the whole question could better be adjusted in a general peace.²⁵

Jay then went to Montmorin, who advised him to continue his efforts, and declared that the exclusive navigation of the Mississippi ought to satisfy Spain.²⁶ Jay acted on the suggestion, but to all his communications Florida Blanca returned no answer. He excused himself on the plea of illness and finally asked Jay to submit in definite terms the demands of Congress in regard to the Mississippi and the boundaries. Jay then sent a project of a treaty of alliance which followed exactly the conditions laid down by Congress in regard to both questions. He dwelt at length on the sacrifices which the loss of the navigation of the Mississippi would entail on the inhabitants of the West, and begged that the generosity of the king would give them

²⁴Jay to Congress, October 3, 1781. (Wharton, *Dip. Cor.*, IV, 739.) Luzerne wrote to Vergennes that Jay counted little on the success of his attempts to treat with Spain before the peace. July 6. (*Esp.*, 604, no. 21, new 44.)

²⁵Jay to Congress. Wharton, *Dip. Cor.*, IV, 738-747.

²⁶Montmorin to Vergennes, July 6. (*Esp.*, 604, no. 21.)

some relief.²⁷ This was practically the end of the negotiation with Spain on the question of an alliance and the disputes over the Mississippi, for the Spanish minister never could find time to discuss the question until after Jay had departed from Spain.

To Montmorin Florida Blanca expressed the most hostile views towards the United States. He dwelt much on the perfidy of the Americans who, he declared, were still devoted to Great Britain. He reiterated his fears of aggression by the new nation, and gave this as the principal reason why he would not enter the alliance. He acknowledged that independence was assured, but hoped that the American republic would always remain feeble. He attempted to revive the old scheme of *uti possidetis* and planned to leave Great Britain in possession of New York, Charleston, and Chesapeake Bay. This he felt would keep the states in dependence on their allies.²⁸

Montmorin opposed this view decidedly and firmly. He ridiculed the idea that a people who had fought as savagely as the Americans could bear any love for their old foe; and he declared that the policy of Spain would make them dependencies of the common foe and thus render fruitless the whole war. If Great Britain should keep these important posts, he argued, American independence will not be absolute, and American commerce will be a prey to the caprice of England. He pointed out that, if Spain wished the new nation to be weak, her wish was assured by the very constitution of the confederacy.²⁹ These arguments had no effect upon Florida Blanca and he remained obstinately set against the recognition of American independence.

²⁷Jay to Congress, October 3, 1781. (Wharton, *Dip. Cor.*, IV, 766 et seq.) A copy of this projected treaty is in the French foreign office. (*Esp.*, 604, no. 187.) Through some error Van Tyne asserts that "Jay never revealed these instructions." (*American Revolution*, 312.) Both Jay and Montmorin assert the contrary.

²⁸Montmorin to Vergennes, March 12, 1781: (*Esp.*, 602, no. 18, new 310.)

²⁹*Ibid.*

The failure of Jay's negotiations widened the breach between the United States and Spain. Spain had never desired an alliance and hated the Americans as rebels. She had aided them only out of hostility to Great Britain, but at the same time had tried to cripple them as a nation. Her offers of assistance had been only for the accomplishment of some of her own immediate ends, and had never looked towards independence. She assisted in the conquest of the Floridas, when they were to be for her own possession; but she insisted that they must include the whole Mississippi Valley. When Congress refused this exorbitant demand, Spain decided to seek the realization of her ambition in other ways, and henceforth treated the pretensions of the new republic with scornful indifference.

In Congress the failure of Jay's negotiations increased the feeling of hostility and distrust towards Spain. The measure surrendering the navigation of the Mississippi had been forced through with difficulty, and when Spain hesitated to accept the terms offered, the opposition increased.³⁰ When news reached Philadelphia of Jay's complete failure, many members of Congress demanded that all negotiations be broken off. They felt that they had conceded too much under the strain of adversity; and now that Yorktown had gone into history, they wished to take back this concession. Many schemes were suggested. One member advanced the idea of offering Russia an establishment in Eastern Louisiana as a check to Spanish aggression and a guarantee of peace in the West.³¹ Congress contented itself, however, with a resolution introduced by Madison that "the limitation affixed by him [Jay] to the proposed surrender of the navigation of the Mississippi in particular corresponds

³⁰Luzerne to Montmorin, September 1. (*Ésp.*, 605, no. 119.)

³¹"Ce Ministre [Livingston] est porté à croire aussi que le Congrès que cette puissance voit avec inquiétude l'élevation d'une République dont elle craint que le voisinage ne lui devienne dangereux . . . Parmi les idées deraisonnables que ces conjunctures ont fait . . . Il n'en est point de plus bizarre que celle d'offrir à la Russie un établissement dans la Louisiane orientale pour la rendre favorable aux Etats-Unis . . . "Luzerne to Vergennes, May 10, 1782. (*E. U.*, XXI, 236, new 48.)

with the views of Congress; that they observe not without surprise and concern, that a proposition, so liberal in itself, and which removed the only avowed obstacle to a connection between the United States and his catholic majesty, should not have produced greater effect on the councils of the latter."³² Congress further resolved that the concession was offered for the immediate aid of Spain and that every delay detracted from the reason for the sacrifice. It declared that no more liberal terms would be offered and with this the question of the navigation of the Mississippi passed out of the Revolution.

The jealousy and ill will of the Spanish court did not escape the knowledge of the watchful Vergennes. He had been irritated at its refusal to recognize the United States, and its grasping ambition had angered him. He had hoped for a more liberal policy but he was at last convinced of Spain's hostility to his American allies.³³ He believed that Florida Blanca would never accede to the alliance, and that the whole question would have to be threshed out at the time of the settlement of peace. By his advice all efforts to induce Spain to sign the treaty of alliance were discontinued; and for the remainder of the war Vergennes sought to obtain such harmony of action as the conditions would permit.

Vergennes realized that the difference between the two countries was fundamental and might lead to serious consequences. He had never brought up the question of the West in his communications with the Spanish court, but he knew from the reports of Luzerne the extent of its claims, and shrewdly surmised that these conflicting pretensions kept Florida Blanca from treating with Congress.

³²*Secret Journals*, III, 99; Charles Thompson to Montmorin, May 24, 1782. (*Esp.*, 607, no. 99.)

³³"Il y a longtemps, Monsieur, que je suis convaincu que M le comte de Florida Blanche a des principes erronés a l'égard de l'Amérique qu'il est secrettement contraire a l'indépendance les Etats-unis et qu'il nous causera autant qu'il sera en son pouvoir des embarras lorsqu'il sera question de traiter cette matiere vis-a-vis de la Grande Bretagne." Vergennes to Montmorin, April 12, 1781. (*Esp.*, 606, no. 159; Circourt, III, 320.)

His best hope of a successful issue was to keep all disputes under cover until the war was finished; and so he refused to commit himself on the question and enjoined his subordinates to do the same.³⁴

The closing years of the war pressed no less heavily upon France than upon the United States. The French government had unflinchingly borne the expenses of many campaigns, but the strain was beginning to tell. Vergennes was not the first to complain. There were others at the court who felt that France had already gone beyond her strength. In September, 1780, Maurepas informed the king that the finances were in such a state that peace was imperative. Vergennes even then did not withdraw from his position but forced his leading opponents out of office. This did not relieve the finances, however, and Vergennes himself was compelled to take measures looking towards peace.

Vergennes found his chief difficulty in satisfying the demands of Spain. He had promised her Minorca, Jamaica, and Gibraltar; but only the first had fallen and the others seemed impregnable.³⁵ It appeared likely that Spain could not get the territories she wanted, and now she was clamoring for indemnity in other regions. Florida Blanca felt that his country could get more by a settlement on the basis of *uti possidetis*,³⁶ which would give her Minorca and the Floridas with some minor concessions, and which would leave New York and the three southern states in the hands of the British. Under these terms also Spain might have claimed Eastern Louisiana, for she maintained that it had been conquered by Galvez; and the Northwest would have remained in British hands.

Military reverses, financial difficulties, and the demands of Spain were all sources of anxiety to the French minister. He knew that France could not much longer continue the struggle, but he felt that the royal honor demanded independence for all the states. He refused to dis-

³⁴Vergennes thus instructed Luzerne, August 12, 1781 (*E. U.*, XXII, no. 17, new 38); to Montmorin (*Esp.*, 603, no. 25).

³⁵Lecky, *American Revolution* (Woodburn ed.), 428.

³⁶Doniol, *Histoire*, IV, 498.

cuss the proposition of *uti possidetis*, and insisted that France would stand by her alliance with the Americans.³⁷ At the same time he realized that unless the allied forces should achieve a striking success it would be impossible to force the British to surrender their recent conquests; and so he instructed Luzerne to "familiarize" Congress with the idea that some sacrifice might be necessary. Vergennes, however, was resolved to maintain the principles of his alliance with the United States above all other conditions.³⁸

In order to maintain the principles of the alliance, Vergennes resolved on aggressive military action, and urged Spain to attack East Florida and Jamaica. The Florida campaign he planned as a help to the Americans.³⁹ He strengthened the forces around Gibraltar and projected another invasion of Canada. He sent De Grasse back to American waters and prepared for a strong campaign. This, he felt, must be his last effort; and, if he failed, he must yield to British terms; but, if he triumphed, the alliance would be maintained in all its provisions. The attack on Jamaica was not made; Gibraltar did not fall; but Yorktown solved the problem, and Vergennes declared that the independence of the whole of the United States was assured.⁴⁰

The question of the boundaries presented to Vergennes a most serious dilemma. On the north there was little difficulty. He did not feel that the Americans could claim all Canada but he was anxious for them to have Halifax⁴¹

³⁷Vergennes declared that the propositions of Spain would be advantageous to France on account of the conquests she had made, but he maintained that it did not enter into his plan of settling the future of America. To Luzerne, September 7, 1781. (*E. U.*, XVIII, no. 69.)

³⁸"Le Roi tient a Ses obligations par principe comme par sentiment, et que son propre intérêt leur est garant de la fidelité avec la quelle il est resolu de les remplir, mais vous aurez soin en même tems de les familiariser insensiblement avec les hypotesis qui en se realizant rendroient un Sacrifice quelconque indispensable. . . ." Vergennes to Luzerne, June 30, 1781. (*E. U.*, XVII, no. 19, new 55.)

³⁹Vergennes to Montmorin, September 6, 1781. (*Esp.*, 605, no. 129.)

⁴⁰Vergennes to Luzerne, July 27, 1781. (*E. U.*, XVII, no. 142.)

⁴¹Vergennes to Luzerne, October 22, 1780. (*Ibid.*, XIV, no. 32.)

to avoid the danger of British aggression. The boundaries between the United States and the Spanish possessions were the source of greatest difficulty, and, as to the justice of the case, Vergennes professed himself totally ignorant.⁴² The only indications that he gave of his sympathies are his bitter protests against Spanish cupidity, and his praise of the moderation of Congress.⁴³

Thus it was that the opposing claims of Congress and the Spanish court entangled Vergennes into a policy that appeared weak and vacillating, and has led to the charge of insincerity. Yet there is no evidence that he made a promise he did not try his best to keep, or that he gave countenance to measures he was unwilling to support; and throughout he showed a willingness, unusual in statesmen of any time, to sacrifice French claims to the cupidity of his allies. In no sense was he responsible for the breach between Spain and the United States. While he made many concessions to the court of Charles III, he promised nothing that interfered with any claim which Congress had set up. He guaranteed to the United States independence and such conquests as they might make and this guarantee he faithfully maintained. The question of the West and the Mississippi did not come within his purview until forced upon him by outside events, and he did not profess to know on which side justice lay. He tried to reconcile contending views and to harmonize differences until the close of the war when the question could be settled on its merits; and it was in this spirit that Vergennes entered upon the negotiations for peace.

⁴²" . . . nous pouvons juger . . . que selon toutes aparances les deux parties auront bien peine a s'accorder sur le partage des territoires qui sont a l'Est du Mississipi et du l'Ohio. Nous garderons le silence le plus absolue jusqu' a ce que nous soyons invités a prendre connoissance de la discussion et a en dire notre sentiment; vous voudrez bien . . . a en faire autant de votre cote." Vergennes to Luzerne, August 12, 1782. (*E. U.*, XXII, no. 38, new 55.) He had previously refused to discuss the subject because it was not "sufficiently clear." Vergennes to Luzerne, September 7, 1781. (*Ibid.*, XVIII, no. 69.)

⁴³Vergennes to Montmorin, April 12, 1781. (*Esp.*, 603, no. 25.) To Luzerne, September 17, 1781. (*E. U.*, XVIII, no. 69.)

CHAPTER XI

VERGENNES AND THE NEGOTIATIONS FOR PEACE

The close of the war did not bring any compromise between the claims of Spain and those of the United States, nor did it enlighten Vergennes on the rights of either country. He had succeeded in postponing the question until all were ready to treat for peace, but with the assurance of pacification the rancor and obstinacy of the opposing forces became more insistent. Congress, united by the land cessions of the larger states into a common interest,¹ and relieved of the dangers and anxieties of invasion, at once returned to its former pretensions. Spain, foiled in her assaults on Gibraltar, and maddened by her misfortunes in the West Indies, clamored for compensation on the Mississippi.

Congress was the first to act. During the preceding years its pretensions had varied with its membership from a claim to all British America down to a proposal to accept merely the Atlantic seaboard. When it appeared that the war would soon be over, Congress adopted the suggestion

¹The struggle between the landless states and the landed ones had been bitter. Virginia had claimed not only Kentucky but the country north of the Ohio, and the small states which had no hopes of conquest complained bitterly against carrying on a war for her aggrandizement. This had been the stay of the French party in Congress. Luzerne to Vergennes, January 4, 1781. (*E. U.*, XV, no. 8, new 112.) Tom Paine wrote a pamphlet in his most caustic style assailing the pretensions of the large states and especially those of Virginia. (Copy with above despatch.) As a result of the opposition of the smaller states, some of the states claiming lands in the West agreed to abandon their claims and allow the lands to be sold for the benefit of the soldiers. These cessions gave a new strength to the confederacy by stopping petty jealousies and hatreds, and by giving a common interest in this vast domain. It probably had much to do with the collapse of the French party.

of Luzerne and began to formulate once more its claims for the consideration of the negotiators.² Vergennes was insistent that the views of Congress be drawn clearly and precisely; and to accomplish this a committee was appointed to draw up instructions for the American envoys.³ It was agreed without difficulty that the treaty of alliance with France should be the basis of the demands of Congress; but in addition it was necessary to determine the boundaries.⁴

On June 6 the committee presented its report and the debates on the boundaries to be claimed by Congress were renewed and continued for more than a week. On the 15th it was agreed to instruct the envoys that "As to the disputed boundaries . . . we refer you to the instructions formerly given Mr. Adams, dated 14th August, 1779." This was to serve only to explain the views and hopes of Congress; but as the instructions declared, "we think it unsafe to tie you by absolute and peremptory instructions." The envoys were to "make the most candid and confidential communications upon all subjects to the ministers of our generous ally, the king of France; to undertake nothing in the negotiations for peace . . . without their knowledge and concurrence, and ultimately to govern yourselves by their advice and opinion . . ."⁵

The provisions regarding the boundaries were not agreed to without much debate and discussion; but there seems to have been no opposition to the clause requiring the commissioners to act only with the knowledge and concurrence of the king. Throughout the war Congress had explained all its intentions to the French minister. Altho

²Luzerne to Congress, May 26, 1781. (*Journals of Continental Congress*, Hunt ed., XX, 561.)

³"Vous voudrez bien en attendant presser cette assemblée d'adresser à Sou plenipre des instructions claires et precisses, afin que les matieres puissent être préparés d'avantage avec luy et que lorsque les negociateurs seront entamées serieusement." Vergennes to Luzerne, July 27, 1781. (*É. U.*, XVII, no. 20, new 142.)

⁴*Journals of Continental Congress* (Hunt ed.), XX, 616.

⁵*Ibid.*, 606, 617.

he had often frankly opposed them, he had never betrayed the confidence reposed in him. There was no reason to think that France was unfriendly to the interests of the United States, and no reason why this confidence should not continue. Luzerne had definitely stated that the king would insist upon independence for all the United States, and would not treat on the basis of *uti possidetis*.⁶ France had also advanced large sums of money and had given promise of further aid.

On the question of the boundaries, however, there was a wide diversity of opinion. Some wished to demand widely extended frontiers with permission to the negotiators to yield as it became necessary, or to leave the settlement of the question until after the peace.⁷ Luzerne opposed any extreme demands and reminded Congress how absurd it was to insist upon conquests with the enemy in possession of much of their own territory. The old arguments were gone over without result,⁸ and finally Luzerne suggested to the committee that "some discretion be left the envoys." Another suggestion was a line of demarkation between the United States and the British possessions, and this Luzerne approved, but the committee refused to present it to Congress.⁹ This discussion brought out the ideas which Luzerne held regarding the boundaries of the United States. Vergennes had expressed the wish that Congress should not set up "indefensible pretensions," but he had declared that he would not dictate.¹⁰ Luzerne interpreted this to mean

⁶*Journals of Continental Congress* (Hunt ed.), XX, 677.

⁷*Ibid.*, 608-609. Luzerne to Vergennes. (*E. U.*, XVII, no. 17, new 145.)

⁸See p. 175 et seq. The question of the charters and the proclamation was again gone over. See Luzerne to Vergennes. (*Ibid.*)

⁹"Un délégué me dit qu'il croyait que Si l'on prenoit pour ligne de demarckation celle que la france vouloit tracer avant la guerre de 1756 on ne pourroit donner une plus grande marque de moderation puisque ce Seroit abandonner a l'Angleterre d'immenses territoires qu'Elle reclamoit au droit de Ses Colonies." This suggestion received the approval of Luzerne. (*Ibid.*)

¹⁰Quant au reglement des limites de quelques Etats nous ne nous mêlerons point mais nous desirons que les Americains n'entravent pas les negociations par des pretentions ensoutenables, leurs continents n'est pas trop vaste pour leur population, et ils seront longtems sans avoir besoin

that his master favored a restricted boundary, when the sense of his instructions pointed only to the necessity of peace. Accordingly he spoke favorably of the plan to restrict the United States to the boundaries which France had demanded before 1756.

The reports of Luzerne reveal three interests opposed to his policy: those of the large states like "Virginia and Massachusetts" which had western claims that they were anxious to maintain; those who feared to have the British too near their frontiers; and those who desired the continuance of the war for profit. Those who out of hatred for Great Britain desired to keep her as far as possible from the American frontiers were mostly small state men, and to these Luzerne devoted his greatest efforts. They believed that the vast regions of the West would soon fill up, and they felt it to be to the interests of their country to keep the new states in the Confederacy. To them Luzerne urged that no matter how extended their boundaries, they must still have neighbors.¹¹ He felt that if he could win over this class, the party of moderation would triumph.

There were so many contrary ideas in Congress that an agreement on definite instructions was next to impossible. The ideas of Luzerne were discussed but were bitterly opposed by Virginia, Connecticut, and Massachusetts, with New York not voting. Nothing was hoped from this latter state for its delegates were "even less tractable than the Virginians on the extent of the boundaries which they

de S'étendu pourquoi donc preferoient-ils à la paix future [un]contingent qui ne fera ni leur bonheur ni celui de leurs arrières neveux? Vergennes to Luzerne, June 28, 1782. (*E. U.*, XXI, no. 103, new 35.)

¹¹"... le parti que je me suis le plus attaché à persuader est celui des gens Sages et modérés, mais que par haine pour l'Angleterre et par crainte de son ancienne influence vouloient la tenir à une grande distance des Etats-unis." Among these was the president of Congress. Luzerne to Vergennes, June 8, 1781. (*E. U.*, XVII, no. 145, fol. 17.) Luzerne spoke of the rapid settlements of Illinois and Kentucky and the danger this would be to the older states whose inhabitants they would entice away by the promise of cheap lands. *Ibid.*

wish to fix for Canada in the West."¹² The large state party was insistent upon the pretentious ultimatum of 1779; but most of the delegates were willing to accept the Ohio River, while a few more were inclined to take the watershed separating the East from the West.¹³ Virginia was most aggressive and demanded first the line running from the mouth of the Miami to the headwaters of the Illinois, thence down that river to the Mississippi. When she found no support for this, she framed as her ultimatum that her northern boundary should be the Ohio, while the territory beyond must remain neutral.¹⁴ Many delegates supported this proposition, but Luzerne declared himself against precise instructions and the motion failed. Yorktown was not yet taken, and so great was the discouragement in Congress that Luzerne believed that it would make almost any sacrifice for peace, even to accepting the Alleghanies as the western boundary. He recognized, however, that such an arrangement would cause universal complaint and arouse intense hostility to France.¹⁵

¹²Luzerne to Vergennes, June 11, 1781. (*E. U.*, XVII, no. 27, new 147.)

¹³*Ibid.*

¹⁴*Journals of Continental Congress* (Hunt ed.), XX, 612, 613.

¹⁵Le troisieme article laisse aux Plenipotentiaires la plus grande latitude sur tous les autres points. Le premiere qui se presente est de determiner se qui constitue le Territoire des treize Etats. Il y a eû trois opinions differentes sur ce sujet dans le Congres. Quelques Delegates vouloient qu'on ne se departit point des limites fixées en 1779 et qu'on n'innovât rien à cet egard leur opinion n'a point prevalu. D'autres demanderent qu'on designât L'Ohio dans l'ultimatum. Ils observoient que c'étoit la limite la plus naturelle la plus sure, la moins Sujette a varier et il y avoit tant d'opinions en faveur de cette motive qu'il auroit dependu de moi de la faire passer mais j'ai trouvé des inconvenient à engager le Congres a rien determiner sur cette matiere.... J'ai pensé qu'il valoit mieux ne rien fixer avec precision.... Je me suis contenté de m'assurer si l'Ohio forme cette limite les treize Etats ne se plaindront point qu'ils se croiront même obligés au Roi. . . . si les circonstances necessitent de plus grandes concessions que cette paix sera moins agreeable . . . Je crois . . . que si les circonstances forcoient a adopter pour limites les montagnes qui separant les Rivieres qui se jettant dans l'atlantique de celles qui content a l'Ouest la paix seroit encore accepté et ratifiée mais qu'elle

Altho the resolutions of Congress were agreeable to Luzerne they did not meet the points at issue and they were not in harmony with the desires of Vergennes, who had asked for definite instructions. The northwest boundary was vaguely outlined, while the possession of the Southwest, which was complacently assumed by Congress and tacitly agreed to by Luzerne, became at the very beginning of the negotiations the great point at issue. Vergennes had refused to interfere in the dispute and had even professed ignorance of the merits of the question and the silence of Luzerne is no less striking.

Altho there was much dissatisfaction with the instructions agreed to by Congress, the efforts to change them met with no success.¹⁶ Livingston, however, explained fully to the peace commissioners the ambitions of the states and urged them to endeavor in every way to extend the western boundary to the Mississippi.¹⁷ He felt strongly the danger of being surrounded by Great Britain, and it was in accord with his advice that the commissioners began their negotiations. It is remarkable that in all these discussions nothing was said of the pretensions of Spain, either by Luzerne or by the Americans.

In spite of the forgetfulness of Congress and the French minister, Spain had not given up her pretensions and her greed for territory was no less devouring than before. Eastern Louisiana was still an object of great interest, for she still was anxious to control the Gulf of Mexico without any one to dispute her claim, and to do this she must control the mighty Mississippi. Spain could then "make the law" for the settlers in the upper Mississippi

occasioneroit des plaintes générales qu'elle refroidiroit nos partisans et qu'il seroit difficile a persuader aux Americains que leurs intérêts n'ont pas été sacrifices." Luzerne to Vergennes, June 13, 1781. (*E. U.*, XVII, no. 148, new 33.)

¹⁶The opposition proposed to reopen the whole question on the return of the New York delegates. Luzerne to Vergennes, July 14. (*E. U.*, XVII, no. 106, new 158.) Virginia revived her claims by a resolution of June 29. *Journals of Continental Congress* (Hunt ed.), XX, 713.

¹⁷Livingston to Franklin. (Wharton, *Dip. Cor.*, V.)

Valley by the control of their commerce, or could force immigration into her own territories by the grant of special privileges.¹⁸

At the beginning of the negotiations Spain did not make any claim to the possession of Eastern Louisiana, but asked merely for the conquests promised her by the convention of 1779, with special emphasis on the guarantee of Gibraltar.¹⁹ In addition to this she presented a demand for the Bahama Islands; but this was peremptorily refused by Vergennes, who declared he could sustain no claim beyond what he had agreed to by his convention with the court at Madrid. Spain did not insist upon this condition but maintained her claim to the "conservation of her conquests around the Gulf of Mexico."²⁰ Rodney's victory in the West Indies made impossible the conquest of Jamaica, which had been promised her; but in spite of the destruction of the fleets besieging Gibraltar, she still insisted upon its restitution.

To Spain as to the United States, Vergennes had always sought to keep his promises; and, tho realizing the weakness of his position, he set loyally to work to obtain the cession of Gibraltar to his ally. The failure of the siege of this stronghold made necessary the offer of some compensation. The negotiations on this point were long and tedious and nothing came of them.

In his desire to recover Gibraltar, Vergennes had sent his secretary Rayneval to London to interview Shelburne, who had recently come to power. Rayneval did not accomplish his purpose, but he opened up a series of discussions with Shelburne on the terms of peace.²¹ Little was said regarding the boundaries in America, altho Shelburne im-

¹⁸See a "note on the new advantages which favor the commerce of Louisiana." Anonymous. (Transcript, *Margry Collections, Documents inédits sous Louisiane, Nou. Acq. franc.*, 9309.)

¹⁹Florida Blanca to Aranda, August 25, 1782. (*Esp.*, 608, no. 166.) Montmorin summed up the claims of Spain as that which was stipulated in the convention. (*Ibid.*, no. 15, new 31.)

²⁰Montmorin to Vergennes, September 20. (*Esp.*, 608, no. 244.)

²¹Doniol, *Histoire*, V, 104.

plied that the West was not included within the bounds of the original colonies. Rayneval, however, refused to commit himself. Shelburne then let it be known that "the Floridas with a district up to the neighborhood of New Orleans, joined to the east territories which lie between the Mississippi and the Lakes, and the western frontiers of America, might form a proper equivalent for Gibraltar."²² This idea did not please Vergennes, who feared the rivalry of Spaniards and British on the Mississippi, and it is doubtful if Shelburne meant it seriously.

Altho the mission of Rayneval was unsuccessful, Vergennes did not cease his efforts to keep his pledge to Spain, and offered to compensate Great Britain out of the possessions of France.²³ News of the signature of the preliminary articles of peace between the British and American negotiators, however, made Shelburne's demands so high that France determined to renew the war to keep her honor with Spain, and was preparing for another struggle when the British ministry and the Spanish court unexpectedly came to terms.

Vergennes was equally determined to keep faith with the United States, and in spite of a strong dislike for Adams, his friendship for the new nation was earnest and sincere. In every way he had pressed American interests at Madrid and had always urged Congress to vigorous action.²⁴ He had guaranteed independence to the United States and had maintained the war at great hardship in order to save the honor of France. As he refused to support Spanish claims to the Bahamas, so he declared also

²²Vergennes to Montmorin, October 6, 1782. (*Esp.*, 609, no. 22, new 81.) Montmorin urged the proposition upon Florida Blanca as a barrier to the Americans; but the Spanish minister refused to consent to give the British a port [Pensacola] on the Gulf of Mexico, and also refused to cede any territory around the city of New Orleans. Montmorin to Vergennes, November 23. (*Ibid.*, no. 129, new 94.)

²³Doniol, *Histoire*, V, 230.

²⁴His statement to Montmorin that "the future of America is of equal interest to Spain and to us" sums up his efforts to secure recognition for his ally. (*Esp.*, 606, no. 159, new 11.)

that he would not support any extravagant pretensions on the part of Congress.²⁵

On the question of the western boundaries France was at last compelled to declare herself through the insistence of Jay. He had been called to Paris by Franklin, and arrived there under the impression that he was to continue the negotiations in which he had not succeeded at Madrid.²⁶ He at once began a discussion with Aranda relative to the disposition of the Mississippi Valley, but the difference between them soon became apparent. Vergennes did not presume to interfere, altho Rayneval expressed surprise at the extent of Jay's demands,²⁷ and submitted a memorial explaining the principles on which the two countries ought to act.²⁸ To the territory south of the Ohio, Rayneval asserted, neither nation had any title except that of conquest; for before the treaty of 1763, he argued, it was owned by France, and after its cession to Great Britain, it was never incorporated with the colonies. Neither country, he urged, had conquered it, and so, by way of settling the dispute, he suggested a division by which the land south of the Tennessee should be under the suzerainty of Spain, and that to the north under the protection of the United States. As to the navigation of the Mississippi, Rayneval expressed the hope that some arrangement could be made by which

²⁵"le roi ne sera pas moins exacte a les tenir de son coté . . . il n'en existe aucune dans nos traites qui l'oblige a prolonger La Guerre pour soutenir les pretentions ambitieuses que les Etats unis peuvent former soit par raport . . . a l'Etendue des Limites." He goes on to say that "je serai toujours a tems de venir a leur Secours car je prevois qu'ils auront plus d'une difficulté a vaincre et même très grandes s'ils persistent dans leurs premieres pretentions." This does not show a spirit of hostility. Vergennes to Luzerne, November 23. (*E. U.*, XXII, no. 43, fol. 138.) Before this Vergennes had written Montmorin that if the Americans would unite more thoroly they would be able to drive the British from the continent. (*Esp.*, 606, no. 159, new 11.)

²⁶Doniol, *Histoire*, V, 108; Jay, *Life of Jay*, I, 137.

²⁷Vergennes declared that he would keep silence the most absolute until he was asked to express his opinion. See p. 200.

²⁸Rayneval said he was acting at Jay's request, and submitted this memorial as his *personal* ideas. Doniol, *Histoire*, V, 159.

the Americans could be given the right, subject to proper regulation. As to territory north of the Ohio, he held by the same reasoning that it was a part of Canada, and as such a fit object of negotiation between the Americans and British.²⁹

This memorial was submitted merely as an opinion on the merits of the question. It was fortified by historical and legal allusions, against which the Americans could urge only their charter rights. It asserted that both Americans and Spaniards must base their claims on the right of conquest. It attempted to apportion to each power the territory which each held or had conquered, and tried to divide the unoccupied lands as equally as possible.³⁰

Altho Vergennes still held to his determination not to interfere in the dispute between his allies,³¹ he held to the belief that the domains west of the mountains were legally the property of Great Britain, subject only to the fortunes of war. He did not think that the charters were of any force, and maintained that whatever the Americans got out of the contest must be gained by war or diplomacy. He was willing to make good his guarantee of the independence of the United States with all their possessions, but he would not continue a war to make additional conquests. To neither Spain nor the United States would he

²⁹Rayneval entitled this memorial an "Idea on the manner of determining and fixing the boundaries between Spain and the United States on one side of the Ohio and towards the Mississippi." (*E. U.*, XXII, no. 57, new 200.)

³⁰Spain held Fort Natchez and all posts on the west banks of the river, from which she could make incursions into the disputed territories, and on this Rayneval based her claims to both banks of the river. As Fort Natchez was the only post to the Southwest, it was argued that the possession of it gave her claim to the whole of the territory. Doniol, *Histoire*, V, 159.

³¹"Au reste M. ces notions sont pour vous seul." Vergennes to Luzerne, October 14, 1782. (*E. U.*, XXII, no. 40, new 115.)

concede anything more than he had already promised, for he felt that peace was essential.³²

The stand of Vergennes was due not to unfriendliness to the United States but to the desire for peace. He realized the importance of the West to the American nation, and wished it to take measures to extend its rights there.³³ In no way did he interfere with the negotiations between Aranda and Jay; nor did he attempt to control the American envoys in their efforts to get all they could. He repressed both Spain and the United States because his country needed peace; and when, without consulting him, the American envoys won more than he thought possible, he still applauded their ability.³⁴ Altho his willingness to aid the Americans received no returns, he showed nothing more than a momentary anger.

Vergennes was not alone in regarding the American claims to the West as without support. Shelburne had ridiculed the pretensions of Congress, and had declared that the Mississippi Valley had never been a part of the

³²"... a present dans la discussion Subsistante entre M. de Cte d'Aranda et M. Jay que les deux parties reclament des countrées sur les quelles aucune d'Elles n'a de droit acquis et qu'il sera à peu pres impossible de les accorder." (*E. U.*, XXII, no. 40, new 115.)

³³"il a été remis a M. Jay une notte confidentielle par la quelle il est a peu pres démontré que les limites des Etats-unis au Sud de l'Ohio se bornent aux montagnes en suivant le versant des eaux et que ce qui est au Nord de cette riviere nommement les lacs a autrefois fait parti du Canada." Vergennes to Luzerne. (*Ibid.*) Vergennes had gained this idea doubtless from the memorial of Rayneval, and this is the first time he expressed it. In spite of this purely legal view of the question Vergennes wrote, "Nous pensons comme les Americains, M. sur l'importance de l'établissement des anglois a Oswego, cette station en même tems qu'elle en impose aux Sauvages met les Anglois en mesure de troubler les derrieres de la province de Newyork." *Ibid.*

³⁴"Si les Commissioners americains sont exacts dans les comptes qu'ils rendent a leurs Commitans ils ne Se plaindront pas que nous cherchons a influenc et a les gener dans leur negociations." Vergennes to Luzerne, November 23. (*E. U.*, no. 43.) After the peace he wrote: "Vous aplaudirez surement M. aussique moi aux avantages tres Etendus que nos allies les americains doivent recueillir par la paix." December 19. (*Ibid.*, no. 45.)

colonies.³⁵ Virginia, the most aggressive of all the states, had insisted upon nothing more than the Ohio as the boundary; but Congress did not have courage enough to insist upon even this much.³⁶ Even after Yorktown some of the most aggressive Americans offered to leave all the disputed territory in the West to the Indians under the joint protection of Spain, France, Great Britain, and the United States,³⁷ and several states agreed to accept the mountains as the western boundary.³⁸

Military conditions also seemed to forbid the pretensions of Congress to extensive territories. The British still held the posts on the Great Lakes and continued to do so for many years. Parts of the South as well as the city of New York and other important posts were still in the hands of the enemy. Under these conditions it seemed that Vergennes was right in his declaration that Congress had no claim whatever to the wide regions of the West.

In spite of all these discouragements Vergennes stood ever ready to help the ambitions of his American allies. Altho he condemned the extravagance of the American claims, he never tried to get his allies to demand less, but offered rather to assist them to the best of his ability.³⁹ In spite of the unconcealed dislike of Jay and Adams, and his own dislike of them, Vergennes showed himself throughout a loyal friend to the United States. Even when he found his counsels disregarded and the pledges made to him badly broken, he showed no trace of jealousy or meanness. For the ability of the American diplomats he showed

³⁵Doniol, *Histoire*, V, 133.

³⁶See page 207, note 14.

³⁷They told Luzerne that "si l'on assurait aux Sauvages la possession des Pays contestés sous la garantie de la France, de l'Esp de l'Angleterre et des Etats-unis ce parti accommoderoit peutêtre tout le monde." Luzerne to Vergennes, September 12, 1782. (*E. U.*, XXII, no. 271, new 68.)

³⁸Luzerne mentions Maryland as willing to accept this. (*Ibid.*, no. 89, new 275.)

³⁹Vergennes to Luzerne, November 23, 1782. (*E. U.*, XXII, no. 160, new 43.) See also p. 211, note 25.

the greatest respect, and their success not only surprised him but aroused in him the liveliest admiration.⁴⁰

To Vergennes America owes a great debt of gratitude for the preservation of its independence. In spite of the fact that he entered the war for a selfish purpose, from which he never entirely escaped, the years of common trials and efforts, the enthusiasm of the French people, and the personality of Franklin, infused his cold heart with something like enthusiasm for the nation he had called into existence, and for whose protection he devoted the best efforts of many years. We may give great praise to the foreign heroes who fought and died in defense of American liberties, but among all the friends of the new republic, no one can show a higher title to loyalty, not even the lovable and chivalrous Lafayette, than the care-worn and thoughtful statesman, Vergennes.

⁴⁰Vergennes wrote of the American envoys that they were "no less practised than the English in the art of drawing indefinite lines and of making them a title and a right." Vergennes to Luzerne, November 23. (*E. U.*, XXII, no. 160.) He further declared that the English bought peace rather than made it. McLaughlin, *Confederation and Constitution* 30. In order to show his good will he made the Americans a new grant of six million livres immediately after the articles were signed. Doniol, *Histoire*, V. 269.

CHAPTER XII

PEACE

Peace, the goal towards which Vergennes had so patiently toiled, came at last; but it came through negotiations unknown to him, and by a diplomacy which overreached his own. During the early years of the war Vergennes had often expressed astonishment at British stupidity in alienating the colonies,¹ and he felt that he was scoring a triumph in winning them to France. With the overthrow of the North ministry, however, the accession to power of Shelburne, first, as secretary of state for the colonies, then as prime minister, all this was changed. Shelburne at once inaugurated a new policy, a policy of conciliation towards an independent republic, and, instead of humiliating America, he bid high for her friendship, and carried off the prize for which Vergennes had already paid so dearly.

With this plan in mind Shelburne had, early in the spring of 1782, sent Richard Oswald, a Scotch merchant, to Paris to sound Franklin on the conditions which the Americans would ask for peace, and to suggest a treaty separate from the one with France. To this idea of a separate treaty Franklin at once objected; but he was ready enough to suggest the terms of peace which he regarded as suitable.² Oswald talked much of conciliation and, with this idea in mind, Franklin declared that in order to conciliate, Great Britain should cede Canada to the United States, as an evidence of her good will.³ This suggestion did not meet any objection from the British agent, who asked permission to submit it to his government, and the

¹See page 14.

²Franklin's *Journal*, *Writings* (Smyth ed.), VIII, 463.

³*Ibid.*, 472.

American envoy consented. A few days later Oswald informed Franklin that he thought the "affairs of Canada would be settled to [your] satisfaction," but he asked that it be not pressed until near the end of the negotiations.⁴

The negotiations dragged slowly on until midsummer, when Franklin became more active; and, on July 10, he outlined to Oswald a definite plan of a treaty, which made as a necessary article "a confinement of the boundaries of Canada to what they were before the last act of Parliament, I think in 1774, if not to a still more contracted state on an ancient footing," and which declared that the cession of all Canada was advisable.⁵ Oswald submitted these conditions to Shelburne, who in the meantime had become prime minister, and had left Townshend to direct negotiations with the Americans. Townshend followed Shelburne's liberal policy and agreed to the withdrawal of British forces from the states, and promised also a part of the "ungranted lands to be annexed to each province in return for the restoration of the loyalists."⁶

In the meantime negotiations were going on rapidly in Paris, and early in August Franklin and Vergennes united in demanding a "treaty that no one would break."⁷ Shortly after this Franklin plead with Oswald to grant the Americans a permanent peace on such conditions as not "to force them into the hands of other people," and he explained that in order to ensure such a peace the United States must have Canada.⁸ From the drift of the negotiations and the avowals of Oswald the experienced American saw the British ministry was willing to sacrifice much for peace, and still more to win the friendship of the United States. Oswald complained that the French proposals were exorbitant and appealed to Franklin to check them;⁹

⁴Franklin, Writings (Smyth ed.), VIII, 486.

⁵Oswald to Shelburne, July 10, 1782. (*F. O., France*, 2a, fols. 42-44.)

⁶Dated July 25, 1782. (*Ibid.*, 2a, fols. 87-92.)

⁷Oswald to Townshend, August 7, 1782. (*Ibid.*, 141.)

⁸Oswald to Townshend, August 13, 1782. (*Ibid.*, 152-161.)

⁹Oswald to Townshend, August 15, 1782. (*Ibid.*, 2a, 173.)

but that wily statesman pressed his advantage so strongly that the British agent was compelled to advise the acceptance of his demands.¹⁰

The British government acted before receiving Oswald's communication, and on September 1 acceded to the full extent of Franklin's ultimatum of July 10. By this it agreed to recognize, first of all, independence. The third article provided for the restriction of the boundaries of Canada to what they were before 1774; the fourth granted the freedom of fishing on the banks of Newfoundland; and another clause added that: "His Majesty will also waive collection of debts before 1775 and also claims of refugees for losses."¹¹

Here was granted all that the Americans could hope to obtain and more than was to be ultimately conceded them. It had been the aim of the Shelburne ministry to detach the United States from France and these conditions were well calculated to effect it. The genius of the mighty Franklin had triumphed.

On September 5, Oswald wrote Franklin that he had received definite information as to the views of the British ministry in regard to the terms of the treaty, and was then ready to begin formal negotiations.¹² Franklin replied three days later, asking for a copy of Oswald's instructions,¹³ and it appeared that the terms would soon be satisfactorily settled.

These instructions, however, were never submitted to Franklin. Jay had arrived at Paris some time before and

¹⁰Oswald strongly urged the cession of that part of Canada added by the act of 1774. "If not granted," he wrote, "this will cause much difficulty, especially on the western frontier, and a refusal would occasion a particular grudge as a deprivation of an extent of valuable territory, the several provinces have always counted upon as their own." He advised also that a right to the fisheries be granted to avoid quarrels with New England. Oswald to Townshend, August 29, 1782. (*F. O., France*, 2a, fol. 234.)

¹¹Townshend to Oswald, September 1, 1782. (*Ibid.*, 2a, 101.)

¹²Oswald to Franklin, September 5. (*Wharton Dip. Cor.*, V, 699.)

¹³Franklin to Oswald, September 8. (*Ibid.*, V, 712.)

begun an aimless negotiation with Aranda which led to nothing, because the two could not agree on the exchange of their commissions.¹⁴ Franklin had been sick since June and was willing to entrust the burden of affairs to his young associate, who was only too glad to undertake the more congenial task. Jay was a far different man from Franklin. He was young and comparatively inexperienced in the management of men, and he possessed neither the reputation nor the personality that gave such weight to the words of his aged compatriot. Jay had come to Paris disgusted with the Spaniards, but he soon came to dislike the French more, and he hated the British as a patriotic American should.

The attitude of Jay at once made it impossible to continue the negotiations; for, on reading the commission of Oswald, he found that it did not recognize the independence of the United States and refused to treat until a new commission was framed with form more to his liking. Franklin protested, but in vain. Oswald was compelled to write for a new commission and the negotiations were held up for several weeks; it was not until September 28 that the two were ready to renew the discussion of terms of peace.¹⁵

In the meantime Jay had found fresh causes of suspicion against the French court. Vergennes had advised him to continue the negotiations and to allow Oswald to act under his old commission, and this had convinced him that "this court chooses to postpone an acknowledgement of our independence by Britain, to the conclusion of a general peace in order to keep us under their direction." The British had transmitted to him a copy of an intercepted letter from Marbois which opposed American claims on the fisheries,¹⁶ and the memorial of Rayneval on the terms of set-

¹⁴Jay to Livingston, September 18. (Wharton, *Dip. Cor.*, V, 740.)

¹⁵Jay to Adams, September 28. (*Ibid.*, 778.)

¹⁶Jay to Livingston, September 18, 1782. (Wharton, *Dip. Cor.*, V, 740.) It is doubtful if this letter of Marbois' is authentic, as the French envoy always wrote in cipher.

tlement between Spain and the United States had angered him. With these feelings he was sure to be alarmed at any unforeseen move on the part of the French court. Jay at once became suspicious of Rayneval's mission to London, and decided to despatch an agent to Shelburne to counteract any intrigues of the French secretary. Benjamin Vaughn, a friend of America, was selected for this purpose, and he was instructed to show the ministry that it was "the obvious interest of Britain, immediately to cut the cords which tied us to France," and to propose a settlement with Great Britain with this undertaking as a basis.¹⁷ Vaughn proceeded to London, had several interviews with Shelburne and convinced him that the United States were willing to break away from France.

Oswald's new commission arrived on the 27th and he and Jay at once drew up a proposed treaty on the basis of the instructions of September 1.¹⁸ The first article provided for the boundaries asked by Congress in 1778, and included, besides what was later assigned the United States, the Great Lakes and the territory south of Lake Nipissing.¹⁹ In this treaty, as in all subsequent projects, there was a provision for the free navigation of the Mississippi.

Altho Townshend had authorized these terms, he disavowed the treaty. The reason is obvious. He had offered these concessions in order to separate the United States

¹⁷Jay to Livingston. (Wharton, *Dip. Cor.*, VI, 29.)

¹⁸Jay to Livingston. (*Ibid.*, 47.)

¹⁹"The said states are bounded north by a line drawn from the north-west angle of Nova Scotia, along the highlands which divide those rivers which empty into the river St. Lawrence, from those which fall into the Atlantic Ocean, to the northermost head of the Connecticut river, thence down along the middle of that river to the 45th degree of north latitude . . . thence due west to the northernmost side of the river St. Lawrence . . . thence straight to the south end of Lake Nepissing, and thence straight to the source of the Mississippi." On the west the United States were to be bounded by the Mississippi and on the south by the Floridas. (*Ibid.*, V, 806; *F. O., France*, 29, 305.)

from French influence,²⁰ but the mission of Vaughn showed him that this end was already accomplished. Before this time the British put forth, as the chief aim of their policy, conciliation; and it was with this understanding that Franklin and Oswald had carried on their negotiations, and upon it Franklin had based his demands. To Great Britain, however, conciliation did not mean so much friendship to her as enmity to France; and when the Shelburne ministry perceived that the councils of their enemies were divided they withdrew their bids for friendship.

Jay was deeply disappointed at the failure of his efforts. He felt that he must strive against all Europe and even against his fellow negotiator. "I think we have no rational dependence except on God and ourselves," he wrote, "nor can I yet be persuaded that Great Britain has either wisdom, virtue or magnanimity enough to adopt a perfect and liberal system of conciliation."²¹ His disappointment was the keener for the assurances of Oswald had convinced him that there would be no objection to the treaty as drawn up. He now showed the greatest indignation towards Oswald and even resorted to threats of breaking off the negotiations.²²

However much Jay felt anger at the duplicity of Britain, he gained no love for France.²³ His suspicion and distrust of her policy increased and soon after the arrival of Adams in October, the two resolved to keep secret from her all knowledge of their negotiations and forced the aged and enfeebled Franklin to agree.

²⁰Shelburne wrote to Carleton and Digby, June 3, that independence was offered "with the view of showing America that farther war was only in the interest of France and Spain, and to detach her from France." (*C. O.* 5, Vol. 178, fol. 439.)

²¹Jay to Livingston, November 17. (*Wharton, Dip. Cor.*, VI, 49.)

²²Jay replied that in the case of the refugees nothing could be done; and that if Great Britain broke off negotiations on that account, the United States would present claims against her for unnecessary destruction in war." Oswald to Townshend, November 6. (*F. O., France*, 29, fol. 340.)

²³Wharton, *Dip. Cor.*, VI, 47.

From this time on, however, the British conducted their negotiations in a different spirit. Hitherto they had talked of conciliation, and even of federal union; but now they began to push more vigorously their material advantages. Oswald had served well enough when conciliation was the end, and he still remained at Paris, where his frankness and sincerity were a valuable asset. To push the claims of the empire, however, a different man was necessary; and the shrewd and determined Strachey was sent to look after the boundary question and the disposition of the loyalists.²⁴

Strachey began his efforts with vigor. No longer were there projects of ceding Canada, but in place of this there was a demand that the country north of the Ohio be used to found a colony of loyalists.²⁵ Nothing had been said of this in the previous negotiations, but now Strachey added a restriction of the right to fish on the banks of the Newfoundland. Of the arguments used to beat down the new demands of Britain we know little; but Adams and Jay were determined men and resolved to surrender nothing.

On the north the Americans offered the choice of two lines. The first provided a boundary running from the intersection of the forty-fifth parallel with the Connecticut river due west to the Mississippi. The second ran west on the same parallel to the St. Lawrence, thence through the middle of the Great Lakes to the sources of the Mississippi.²⁶ Both provided that in case Great Britain should keep Florida the southern boundary should run through the mouth of the Yazoo due west to the Appalachicola, and both provided also for the free navigation of the Mississippi. Strachey had been borne down by the superior skill and determination of his adversaries, but he refused to do

²⁴Townshend to Oswald, October 23, 1782. (*F. O., France*, 2a, 328.) Of Strachey Adams wrote, "He is artful and insinuating. He pushes and presses every point as far as it could possibly go; he is the most eager, earnest, pointed spirit."

²⁵Wharton, *Dip. Cor.*, VI, 113.

²⁶*Ibid.*, V, 856. Strachey to Townshend, November 8, 1782. (*F. O., France*, 2a, 363; *C. O.* 5, 8.)

more than transmit the proposed treaties to Townshend for his consideration. Neither of them was in accord with the instructions sent out by the British ministry, but the Americans had pronounced this their ultimatum.²⁷

The provisions regarding the Floridas were the result of Jay's efforts and grew out of his dislike for Spain and perhaps also of a desire to embarrass Vergennes. Jay had formerly been very hostile to Great Britain; but this had changed under the genial frankness of Oswald and through the suspicious attitude of his allies into a feeling of friendship.²⁸ During the early days of September, while Oswald was waiting for his new commission, Jay often talked informally with him of the Floridas, and in these conversations, the British envoy often expressed the desire that if Great Britain should keep them their boundary might be pushed still further to the north. Jay met the suggestion kindly and declared that since the proclamation of 1763 the boundary had been moved northward by another proclamation.²⁹

With this the matter was allowed to drop, but Jay brought it forward again when he took up the negotiations with Oswald, and suggested that the British forces in New York be sent on an expedition to seize these provinces.³⁰ He declared that he did not want to leave in the hands of the Spaniards authority over the Gulf of Mexico and with it control of the western trade; and he maintained that any agreement regarding this region would not be a violation of the alliance with France.³¹ Jay argued

²⁷Wharton, *Dip. Cor.*, V, 856; *F. O., France*, 2a, 363; *C. O.* 5, 8.

²⁸Until the middle of August Oswald believed that nothing could be expected of Jay. Oswald to Townshend, August 7. (*F. O., France*, 2a, 125.) Later he wrote, "Jay is more friendly." (*Ibid.*, 162.)

²⁹Oswald to Townshend, September 11. (*F. O., France*, 2a, 332.) This was the proclamation of 1767.

³⁰October 2. (*Ibid.*, 271.)

³¹"The employment of these troops [in America] against Spain would not infringe on the treaty with France, Jay says, for the states are not bound to Spain." (*Ibid.*) "Jay again insists that for the common good Florida shall not be left in the hands of the Spaniards." (*Ibid.*, 280.)

that the province was rich in itself and would be of additional advantage to the British in giving them control of both outlets to the Mississippi Valley; the Gulf and the St. Lawrence, by which they could hold all the trade they had ever possessed. As a final argument he urged that the retention of the Floridas would go far to win the friendship of the Americans. He became every day more earnest and finally offered to write General Washington asking him to permit the peaceable evacuation of New York and Charleston by the British troops.³² Oswald was convinced, from Jay's earnestness, that he could carry the boundary of West Florida far to the northward.³³

Townshend did not take kindly, however, to the efforts of Jay. He was suspicious of the whole transaction, but he believed that capital might be made of it if France should learn the details.³⁴ Oswald was anxious for the arrangement, and urged that if it had no other merit it would at least please the Americans.³⁵ Jay was afraid of the effect of his suggestions, and when the provision regarding the Florida boundary was inserted he "scored it out" but "admitted it in addition at the bottom as a separate article."³⁶ Jay himself was not proud of his tactics, and altho he dwelt with pride on the early negotiations with Oswald with which he had nothing to do, he never found occasion to discuss the part he took in the Florida boundary arrangement.³⁷

In the later negotiations Franklin took little part and their success may be attributed to the vigor and determination of Jay and Adams. The man, who had won for the United States the aid of France and who had overreached the diplomacy of Britain, was now worn with disease, and was pushed out by his younger associates. He found his

³²Oswald to Townshend, October 7. (*F. O., France*, 2a, 302.)

³³October 8. (*Ibid.*, 310.)

³⁴Townshend to Oswald, October 26. (*Ibid.*, 330.)

³⁵Oswald to Townshend, December 4. (*Ibid.*, 489.)

³⁶Oswald to Strachey, November 8. (*Ibid.*, 388.)

³⁷Compare letters of Adams to Livingston on this question. (Wharton, *Dip. Cor.*, V, 856.)

advice overborne in their councils, and his suggestions disregarded; but to preserve harmony he still signed their despatches and forebore any opposition. Altho his shrewd mind must have seen clearly the contempt with which Adams and Jay regarded him,³⁸ he bore the humiliation patiently, and at last with hearty goodwill made their peace with the irritated Vergennes.³⁹

The firmness of Jay and Adams was not due to any knowledge of the negotiations of their allies but to their own personal convictions. At that time, however, Florida Blanca and Shelburne were deadlocked over the question of Gibraltar; and unless terms were speedily arranged with the Americans, the allied powers might renew the war.⁴⁰ Under the circumstances Shelburne chose to give the United States favorable terms and detach them from the Bourbon alliance and then refuse the demands of Spain.

The work of Jay and Adams made it impossible for the Spanish court to realize its hopes. The Bourbons had offered Guadaloupe and San Domingo for Gibraltar and expected to settle on these terms. When Shelburne heard of the agreement with the Americans, however, he raised his price so high that it could not be accepted and, even after the preliminaries between Great Britain and the United States were signed, France threatened to renew the war.⁴¹

Shelburne was anxious for peace and made a last effort for conciliation. He offered to cede Spain the Floridas and Minorca provided she would surrender her pretensions to Gibraltar; and Spain seeing the helplessness of her position accepted these terms.

There remained the question of the navigation of the Mississippi. The British had conceded it to the Ameri-

³⁸See Adams's Journal for his opinion of Franklin.

³⁹Wharton, *Dip. Cor.*, V, 857.

⁴⁰"Correspondence of Fitzherbert," who was negotiating with France and Spain. (*F. O., France*, 7, 797, et seq.)

⁴¹Doniol, *Histoire*, V, 228-231.

cans but their concessions were valueless. In the final negotiations Vergennes was to show again his friendship for the United States. If Great Britain had surrendered the right to navigate the Mississippi to Spain the Americans would have had no recourse. If she had fixed the boundaries of the Floridas in her treaty with Spain, American claims would have been weakened. Spain was anxious to obtain these advantages; Great Britain had no interest in refusing them; and to Vergennes alone must be given the thanks for thwarting Spanish ambition.⁴²

The preliminaries of peace between Great Britain and the United States were agreed upon on November 20, 1782; between Great Britain and the Bourbon powers on January 20; and the question of the West passes out of the American Revolution.

The navigation of the Mississippi and the boundaries of the Floridas were still fruitful causes of dispute. Florida Blanca accepted the western boundary as agreed upon by the British and American negotiators, and began at once negotiations concerning the Mississippi.⁴³ Montmorin and Aranda recommended that New Orleans be made a free port; but this advice was too liberal for the Spanish minister.⁴⁴ Vergennes expressed similar views,⁴⁵ altho he

⁴²"Je suis informé d'une maniere assez positive que ce dernier [J. Adams] a mandé en amérique que nous avons cherché a les contre carrer en angre relative aux limites et . . . Des imputations de cette nature sont si absurdes qu'elles se detruisent paretles-mêmes cependant comme j'ai lieu a croire qu'elles ont quelques adherents en amerieue et comme M. Adams doit y retourner incessamment, je pense se devoir a tout evenement vous mettre en état de les refuter." Vergennes to Luzerne, September 7, 1783. (*E. U.*, XXV, no. 52, new 144.)

⁴³Montmorin to Vergennes, February 18, 1783. (*Esp.*, 610, no. 67.) Vergennes wrote that the great trouble between the United States and Spain was the navigation of the Mississippi. (*Ibid.*, no. 80.)

⁴⁴Montmorin to Vergennes, March 1, 1783. (*Ibid.*, no. 110.)

⁴⁵Vergennes declared that Spain would not adopt his sentiments on account of contraband. (*Ibid.*, no. 149.) . . . la conduite de l'Espagne à l'égard des Etats-unis etablit une sisteme d'eloignement entre les deux nations. Vergennes to Luzerne, December 20, 1782, (*Ibid.*, XXII, no. 46, new 188.)

realized that they were futile. At the same time he urged moderation upon the Americans in their dealings with Spain,⁴⁶ and preserved to the last his rôle of harmonizer.

In America news of the peace was received with joy, altho there were many who complained that the boundaries of the country were too much restricted.⁴⁷ Spain raised no complaint, and Vergennes was happy that, in keeping the faith as an honest man, he had at last wrought the humiliation of England and glorified the prestige of his beloved France.

⁴⁶Vergennes to Luzerne, December 20, 1782. (*E. U.*, XXII, no. 118.)

⁴⁷. . . au milieu de cette agitation un petit nombre de délégués se () montrent déjà inquiets a l'égard des limites . . ." Luzerne to Vergennes, February 8, 1783. (*E. U.*, XXIII, no. 51, new 154.)

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——— and Davenport, Frances G. *Guide to the Manuscript Materials for the History of the United States to 1783, in the British Museum, in Minor London Archives, and in the Libraries of Oxford and Cambridge*. Carnegie Institution, Washington, 1908.—As carefully prepared as the *Guide to the Public Record Office*. It does not, however, have as much to do with material valuable for this study as does the former.

Canada. *Report on the Canadian Archives*. 26 vols. in 23. Ottawa, 1882-1905.—Contains much material of interest regarding British policy and American conditions.

Catalogue des livres, recueils, cartes, etc., relatifs à la guerre de l'indépendance de l'Amérique et à l'établissement de la république des États-Unis de l'Amérique du Nord. Amsterdam, 1888.—Of little value.

Perez, L. M. *Guide to the Materials for American History in Cuban Archives*. Carnegie Institution, Washington, 1907.

Shepherd, William H. *Guide to the Materials for the History of the United States in Spanish Archives* (Simancas, the Archivo Nacional, and Seville). Carnegie Institution, Washington, 1907.

United States. Bureau of Rolls and Library, *Bulletin*, No. 1. Washington, 1893.—This gives a good summary of the documents in the Department of State.

Van Tyne, Claude Halstead, and Leland, Waldo Gifford. *Guide to the Archives of the Government of the United States in Washington*. Carnegie Institution, Washington, 1904.—This is a very useful manual and covers completely the archival material in Washington.

MANUSCRIPT SOURCES

FRANCE.

A. Archives Nationales. Paris.—The materials found in the French National Archives fall into four groups: Archives des Colonies, Canada; Archives des Colonies, Louisiane, 44, division 2; Archives de la Marine, B. 4, cartons 125-402; Correspondance de Vergennes, series K, 164.

(This classification was taken from Doniol, and, altho the present arrangement is somewhat different, a request calling for the old numbers brought the works desired.)

Archives des Colonies, Canada, contain little material of the period of the Revolution, and most of the earlier material which I saw related mostly to questions of administration.

Archives des Colonies, Louisiane. These are largely of the same character as the former but they contain a few documents of a political character and some of first-rate importance.

État Sommaire des Archives de la Marine Antérieures à la Révolution, B 4, cartons 125-402.—These contain plans of naval and military operations from 1774 to 1783, many of them of such a character as to reveal the trend of French diplomacy, and also many documents of great political importance. This division is worthy of careful and exhaustive study.

Correspondance de Vergennes, series K, 164—I found little of importance in this.

B. Bibliothèque Nationale, Division des Manuscrits. Paris.—The Division of Manuscripts in the National Library is much better conducted than the National Archives; it is comparatively easy to learn what it contains and it is not difficult to gain access to any desired documents. Only the Doniol Transcripts and the Margry Collection were used.

1. Doniol, Henri. *Histoire de la participation de la France à l'établissement des États-Unis d'Amérique*. Copies et épreuves de l'imprimé. Paris. Impri. Nationale, 5 t. in 4^o, 1888-1892. Don de l'auteur, H. M. Doniol, directeur de l'Imprimerie nationale. 34 vols. in mss. and proofs. *Nouvelles Acquisitions françaises*, 6464-6497. The volumes of these transcripts are classified as follows:

I-VI. *Affaires Etrangères, Angleterre*, 1774-1783.

VII. *Bibliothèques et Archives anglaises*, 1775-1782.

VIII-XVII. *Affaires Etrangères, États-Unis*, 1775-1782.

XVIII. *Affaires Etrangères, États-Unis, Supple*, 1765-1789.

XIX-XXIX. *Affaires Etrangères, Espagne*, 1774-1782.

XXX. *Affaires Etrangères, Prusse, Vienne, Russie, Hollande, et Suede*, 1776-1782.

XXXI. *Archives et Bibliothèques nationales; documents divers*, 1774-1795.

XXXII. *Archives de la Marine*, 1776-1782.

XXXIII-XXXIV. *Archives de la Guerre, Correspondance de Rochambeau*, 1799-1781.

These documents were, for the most part, well copied, and they were very useful when the original was illegible. They were also useful as a guide to the documents in the National Archives, the Foreign Office and in other places.

2. Margry, P. *Documents inédits sous la Louisiane, études sous le titre d'histoire des cessions de la Louisiane*. *Nouvelles Acquisitions fran-*

çaises, 9309 et seq.—Has a great number of transcripts of documents collected from many sources; many of these are very interesting.

C. Ministère, Archives des Affaires Etrangères. Paris.

1. Angleterre. Vols. 500 et seq.—The documents in this series do not reveal much of French policy, as Vergennes did not take the ambassadors to England fully into his confidence. The series has nothing regarding the West.

2. Espagne. Vols. 570-610 (1774-1783).—This contains the sources for all the diplomatic negotiations between France and Spain during the Revolution, the correspondence between Vergennes and the French ambassadors to Spain, between these ambassadors and the Spanish court, and minutes of cabinet meetings, the decision of which might involve Spain, copies of many Spanish documents relating to the American Revolution, and other documents of importance. On account of the close relations of the two countries we find here the fullest account of Spanish and French policy regarding the territories at stake in the Revolution.

3. France. Vols. 410 et seq. (1774-1783).—These volumes contain some documents of great importance, but comparatively few by men who were directing affairs.

4. États-Unis. Vols. 1-25 (1778-1784).—These volumes contain the diplomatic communications between Vergennes and the French agents in America. With the series Espagne they give the whole policy of France toward the American Revolution. They also give much information concerning the resources of the country, the internal conditions in the United States, and politics both within and without Congress. The accounts of Gerard and Luzerne, of Washington, Gouverneur Morris, Jay, Madison, John and Samuel Adams, and the Lees, represent them in quite a different light from that commonly accepted, and give new information on the lapses of some of them.

The Archives des Affaires Etrangères have a double system of numbering the documents contained therein. They were first numbered consecutively as they were filed, and Doniol referred to these numbers alone. Since then the documents have been in part renumbered according to another system; in the text references are made to both systems, the old and the new.

GREAT BRITAIN.

A. British Museum. London. Auckland Papers, 34415-34419.

B. Public Record Office. London.

1. Colonial Office Papers 5, Nos. 7-264. Letters of the secretaries of state, orders in council, minutes of council meetings, abstracts of letters, Indian affairs, petitions, military dispatches, war office papers, commissions to colonies, peace commissions, Pelham correspondence, and a great quantity of miscellaneous matter.—The Colonial Office is rich in materials concerning the activities of the British in the Mississippi Valley, their plans

and their methods of carrying them out, and it also contains personal papers that shed light on the subject.

2. Foreign Office.

a. America and West Indies, Vol. 290. Letters on Spanish support to the rebels on the Mississippi (1776-1778).

b. France, Nos. 2-10. Advices and intelligences, correspondence of Thomas Walpole, Richard Oswald, Alleyne Fitzherbert, Thomas Grenville, Duke of Manchester, William Strachey, Thomas Townshend, and the Earl of Shelburne (1782-1783).—This series describes all the negotiations between England and the allies from the British viewpoint, and reveals quite fully the plans and purposes of the British ministers.

c. Miscellaneous.

No. 8. American duplicates, 1782-1783.

No. 468. Foreign minister's letter book, 1782-1783.

No. 535. American negotiations in Paris, 1782-1783. This is a collection of transcripts of the most important papers describing the negotiations at Paris. I had no opportunity to see this number as it was, at the time when I was in London, withdrawn from the use of the public.

d. Spain. No. 85. Miscellaneous dispatches of small importance for this subject. All the documents described above in the Public Record Office, except that otherwise noted, were used in the preparation of this study. Many more were consulted, but, as they proved of no value for my purpose, they are not described. No attempt is made, however, to give a full description of these documents, for they are fully and carefully described in Andrews' *Guide to the Public Record Office*.

UNITED STATES.

A. Department of State. Washington.

1. Papers of the Continental Congress.

No. 5. Secret Journals of Foreign Affairs, November 29, 1775-September 16, 1778. 3 vols. folio.—These have been published in the *Journals of the Continental Congress*.

No. 18. Foreign letters of R. L. Livingston.

No. 79. Letters of the Committee of Foreign Affairs and of R. L. Livingston, secretary for foreign affairs. 3 vols. and appendix. Vol I, letter book of the committee of foreign affairs and of R. L. Livingston, 1776-1782. Vols. II and III, letters of R. L. Livingston. Appendix, letter book of the Committee of Foreign Affairs, 1776-1781.—Many of these have been published in Wharton.

No. 82. Letters of Franklin to the President of Congress and to R. L. Livingston, secretary for foreign affairs. 3 vols. folio.—Many or perhaps all of these are published in Smyth's edition of Franklin's Works.

No. 85. Letters of the Joint Commissioners for the negotiations of peace. 1 vol. folio.—Published in Wharton.

No. 95. Letters of de la Luzerne. 2 vols. folio.—These are im-

portant in showing the methods by which the French attempted to influence Congress.

No. 101. Transcripts of letters of Franklin and Adams, 1781-1783.

No. 105. Transcripts of letters of joint commissioners of the United States, 1777-1779.

No. 106. Transcripts of letters of joint commissioners for the negotiations of peace.

No. 110. Letters of Jay, 1779-1784.—Published in *Correspondence and Public Papers of John Jay*.

No. 111. Communications made by Monjr Gerard, Minister Plenipotentiary of His Most Christian Majesty to the United States of America. Letter book.

No. 114. Record of Correspondence with Foreign Ministers, 1778-1779
2. Franklin Papers.

No. 1. Records of the United States' legation at Paris, 1777-1780.

No. 2. The same, 1779.

No. 3. The same, 1779-80.

Nos. 8 and 8a. The same and records of the Peace Commission, 1780-1783.

No. 12. Oswald's Journal (transcripts), 1782.

No. 13. Franklin's Journal, 1782.

These papers furnish abundant information regarding the part Franklin had in American diplomacy.

B. Library of Congress, Division of Manuscripts. Washington.

1. Papers of the Continental Congress.

No. 4. Secret Journals of Congress, Foreign and Domestic, from October 18, 1780, to March 29, 1881, folio.

No. 7. Journal of Congress called the "more secret journal," June 6, 1781-August 8, 1782. Pamphlet, original and letter book.

Nos. 4 and 7 have been published in the *Journals of the Continental Congress*.

No. 13. Letter books of the Presidents of Congress (Henry Laurens) containing official letters from November 1, 1777, to December 8, 1778. 2 vols., folio and index.

No. 14. Letters of the Presidents of Congress (John Jay and Samuel Huntington), December 11, 1778-May 19, 1780.

No. 18. Letter books (A and B) of Charles Thomson, secretary of Congress, containing the record of official letters from November 20, 1779, to May 1, 1789. 2 vols. folio.

No. 25. Reports of committees relating to the Department of Foreign Affairs from 1776 to 1788. 2 vols. folio. Each volume has two parts.

These four numbers show the efforts of Congress to work out a policy towards the West. With these and the letters of Gerard and Luzerne we have a full account of this policy.

No. 41. Memorials addressed to Congress from 1775 to 1778. 15 vols. folio and index.

No. 48. Memorials of the inhabitants of Illinois, Kaskaskia, and Kentucky, 1780-1785. 1 vol. folio.

No. 50. Letters and papers of Oliver Pollock from 1772 to 1782. 2 vols. folio. With them is a bundle of letters relating mostly to the purchase of slaves.

These three numbers give important information in regard to the state of public feeling in the West, and from the letters of Pollock much information can be gathered regarding Spanish aid to the Americans.

No. 166. Letters and papers relating to Canadian affairs, to General Sullivan's expedition in 1779, and to the northern Indians. It also gives an account of Lafayette's proposed expedition of 1778. Folio.

2. Stevens, Benjamin Franklin (compiler). Catalogue Index of manuscripts in the archives of England, France, Holland, and Spain, relating to America, 1763-1783. 50 vols. Chronological index to same. 100 vols. Alphabetical index to same. 30 vols. (London, 1870-1902).—The 180 volumes are in manuscript in the Library of Congress. The work is still very useful, but since its preparation the documents in the Public Record Office in London and in the Foreign Office in Paris have been re-numbered so that the references in Stevens's work are now incorrect. To one who wishes to know what is contained in the archives of Europe relating to America, Stevens is useful.

3.—Transcripts of documents in European archives relating to America, 1763-1783. About 200 cartons.—Not complete on the subject of the West.

4.—Transcripts of documents relating to the French alliance, 1778-1784. 19 boxes.—Documents transcribed from the French Foreign Office, principally correspondence of Vergennes with the French ministers in America, office minutes, taken mostly from the Archives des Affaires Etrangères, États-Unis, III-XXVII.

5.—Peace transcripts, 1782-1783. 18 vols.—These are transcripts from foreign archives relating to the treaty of peace.

6. British transcripts. Transcripts from the British Museum, Bodleian, Cotton, Egerton, Hargrave, Harleian, King's Hyde, Lansdowne, and Sloane libraries, and from the Public Record Office. 248 boxes.—This collection has, as yet, added very little to our knowledge of the Revolutionary period.

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Force, Peter. *American Archives in Six Series*. Series one, two, and three were never published. Series four and five were published under authority of an act of Congress. Washington, 1837-1853.—Of considerable value, but now largely superseded.

Franklin, Benjamin. *Writings*, edited by Albert Henry Smyth. 10 vols. New York, 1905-1907.—Franklin understood diplomacy better than any other American of his time, and he fully appreciated the importance of the West. As a result, his works possess great value for a study of the diplomacy of the Revolution. Smyth's edition is good but there are additional documents in the *Papers of the Continental Congress* and some letters of considerable value in the French foreign office.

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Mémoire historique et politique sur la Louisiane par Vergennes! Paris, 1802.—A forgery; see above pp. 31-32.

New York. *Documents Relating to the Colonial History of the State of New York, Procured by J. R. Brodhead*. Vols. I-XI edited by E. B. O'Callaghan; vols XII-XV edited by B. Fernow. 15 vols. Albany, 1853-1883.

Sparks, Jared. *The Diplomatic Correspondence of the American Revolution*. 6 vols. Washington, 1857.—Now superseded by Wharton's work.

Stevens, Benjamin Franklin. *Facsimiles of Manuscripts in European Archives Relating to America*. 1773-1783. London, 1889-1898.—The only

publication that contains a fairly complete set of documents on the European side of the diplomacy of the American Revolution.

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———. *Secret Journals of the Acts and Proceedings of Congress from the first meeting thereof to the dissolution of the Confederation by the adoption of the Constitution of the United States.* 4 vols. Boston, 1820.—Vols. II and III relate to foreign affairs. This work has been superseded in part by the *Journals of the Continental Congress* (Ford ed.).

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Wharton, Francis. *The Revolutionary Diplomatic Correspondence of the United States*, Washington, 1889.—A useful collection of the most important documents found in the archives at Washington.

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Alden, George Henry. *New Governments West of the Alleghanies before 1780.* Bulletin of the University of Wisconsin, Economics, Political Science, and History Series, II, No. 1. Madison, 1897.

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———, "Genesis of the Proclamation of 1763." *Michigan Historical Collections*, XXXVI. Lansing, 1908.

These two studies by Professor Alvord contain many interesting suggestions regarding British policy toward the West in the years preceding the outbreak of the American Revolution.

———, and Bidgood, Lee. *The Explorations of the Trans-Alleghany Region by the Virginians, 1650-1674.* Cleveland, 1912.

Bancroft, George. *History of the United States of America from the Discovery of the Continent*. 6 vols. New York, 1882. Altho this work has many errors of detail, it shows a breadth of view and an appreciation of actual conditions that make it one of the most valuable accounts of the diplomacy of the American Revolution. Bancroft knew better than most American historians the characters and aims of the men of this period, and he was able to express his knowledge in clear and vigorous language. He undoubtedly knew much of the French sources, and writes with apparently first hand knowledge. Altho the French archives were not open to his inspection, in some way, possibly through his acquaintance with French diplomats, he gained a wide knowledge of their contents. He wrote with honesty and great ability, but often he expressed his ideas with too much patriotic fervor.

Beer, George Louis. *British Colonial Policy, 1754-1765*. New York, 1907.—This is a valuable survey of British colonial policy during the period treated, but it has little regarding the West.

Channing, Edward. *A History of the United States*. 3 vols. New York, 1905-1912.—Vol. III gives one of the best surveys of the period from 1763 to 1789 that has yet been written. Channing's account of the diplomacy is fair minded and carefully written. His account of the aims of French diplomacy, however, does not bear evidence of careful research, and he is too much biased by the views of early American statesmen.

Circourt, Adolphe Marie Pierre, Comte de. *Histoire de l'action commune de la France et de l'Amérique pour l'indépendance par George Bancroft . . . traduit et annoté . . . accompagné de documents inédits*. 3 vols. Paris, 1876.—Vols. I and II are a rather free translation of a part of Bancroft's history. Vol. III, *Documents originaux inédits* is made up of documents relating to the diplomacy of the American Revolution gathered from the archives of France, Spain, Great Britain, Prussia, and other countries. These documents are freely translated into modern French and are poorly edited.

Coffin, Victor. *The Province of Quebec and the Early American Revolution*: Bulletin of the University of Wisconsin. Madison, 1896.—Valuable for its presentation of certain phases of British policy toward the West during the years preceding the outbreak of the Revolution.

Doniol, Henri. *Histoire de la participation de la France à l'établissement des États-Unis d'Amérique*. 5 vols. Paris, 1885-1892.—This work has a store of valuable documents not otherwise easily accessible. The narrative is too controversial in character to be particularly useful, and the account of American conditions is especially one-sided. Altho Doniol drew extensively from the French archives, he had no knowledge of the American or English sources. In his completed work Doniol gave little attention to the West, altho his notes, known as the "Doniol Transcripts" and now preserved in the National Library at Paris, contain much of the material used in this study.

Everett, Edward. Review of Sparks' *Diplomatic Correspondence of the American Revolution*: North American Review, XXXIII.

Fitzmaurice, Lord Edmond. *Life of William, Earl of Shelburne, with Extracts from His Papers and Correspondence*. 3 vols. London, 1875-1876.—This is an admirable work. The narrative is clear and to the point, and the documents are well selected. The whole work is scholarly and is written with a fairness unusual in works of this character. The new edition appeared after this study was completed.

Fortier, Alc  e. *A History of Louisiana*. 4 vols. New York, 1904.—A good narrative account containing many details of curious interest.

Gayarr  , Charles. *History of Louisiana*. 4 vols. New Orleans, 1903.

Hale, Edward Everett, and Hale, Edward Everett, Jr. *Franklin in France. From Original Documents Most of Which Are now Published for the First Time*. 2 vols. Boston, 1887-1888.—This biography is very friendly to Franklin, but the biographers depended upon the accounts of Adams and Jay for their knowledge of Franklin's activities and thus fail to do justice to the greatness of the man whose work they attempt to portray.

Hamilton, Peter Joseph. *Colonial Mobile*. Boston and New York, 1897.—Interesting but of little value for this study.

Howard, George Elliott. *Preliminaries of the Revolution*. (American Nation Series, VIII.) New York, 1905.

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Kapp, Friedrich. *Leben des amerikanischen Generals Johann Kalb*. Stuttgart, 1862. Translated into English as the *Life of John Kalb, Major General in the Revolutionary Army*. New York, 1884.—This is a work of great value, little known but reliable and scholarly in every respect. In it are copies of many documents not elsewhere known but those which I have been able to compare with the original are accurately copied.

Kingsford, William. *History of Canada*. 10 vols. London, 1887-1898.—A dry and commonplace style is the worst fault of this work. It is a mine of information and its attitude is fair toward all parties.

Lecky, William Edward Hartpole. *History of England in the Eighteenth Century*. 8 vols. London, 1883-1890.

McLaughlin, Andrew Cunningham. *The Confederation and the Constitution*. 1783-1789. (American Nation Series X.) New York, 1905.—Written in a spirit of fairness. The first chapter on the negotiations for peace is the only one bearing on this study. It attempts to reconcile the conventional American view with Doniol, but the result is not a just view. Bancroft's treatment of the subject is more accurate.

Mason, E. G. "March of the Spaniards across Illinois": *Magazine of American History*, XV, 457.—The conclusions of this account are mere surmises without any foundation of fact.

Ogg, Frederic Austin. *Opening of the Mississippi*. New York, 1904.—Of little value for this study.

Parton, James. *Life and Times of Benjamin Franklin*. 2 vols. Boston, 1867.

Perkins, James Breck. *France in the American Revolution*. Boston and New York, 1911.—A semi-popular account based largely on Doniol.

Raynal, Abbé. *The Revolution in America*. Philadelphia, 1782.—Of little value.

Rives, William Cahill. *History of the Life and Times of James Madison*. 3 vols. Boston, 1859-1868.—One sided; gives little information on the politics of Congress.

Roosevelt, Theodore. *Winning of the West*. 4 vols. New York, 1894-1896.—Gives no information on the subject of this study.

Tower, Charlemagne. *The Marquis de La Fayette in the American Revolution*. 2 vols. Philadelphia, 1901.—An interesting story but one-sided. Taken largely from Doniol.

Turner, Frederick Jackson. "Policy of France toward the Mississippi Valley during the Administration of Washington and Adams:" in *American Historical Review*, X, 255 et seq.—See above pp. 31-32.

Van Tyne, Claude Halstead. *The American Revolution*. (American Nation Series, IX.) New York, 1905.—An excellent general account. The work is fair in spirit, but its account of the diplomacy of the Revolution is not based upon extensive research outside the archives at Washington. It attempts to maintain a balance by combining the accounts of Doniol with those of American writers; but this method does not always lead to the exact truth.

Winsor, Justin. *The Westward Movement*. Boston, 1897.—Accepts as true all the suspicions which American statesmen felt toward France; of no value for the diplomatic phases of the westward movement.

INDEX

- Acadia, 81.
- Adams, John, in Congress, 120; minister for negotiations of peace, 128; attitude towards France, 129, 138; arrives in Europe, 138; arrives at Paris, 221; American commissioner for negotiations for peace, 221, 223, 225.
- Adams, Samuel, attitude toward France, 181.
- Africa, 40.
- Albany Convention, 62.
- Alleghanies, 7, 11, 49, 169.
- Alliance between France and Spain, 127. See also France, Spain.
- Alliance between France and United States, 78, 108, 159, 160. See also France, United States.
- America, center of world diplomacy, 20. See also United States, Congress.
- American commissioners for negotiation of peace, appointment of, 128; resolve to keep secret their negotiations with Great Britain, 221; ultimatum of, 223; position of, 225. See also Adams, Franklin, Jay.
- American commissioners to France, 62; ask treaty with France, 64; willing to surrender the Floridas, 65; make treaty of alliance, 78. See also Alliance between France and United States.
- American Revolution, 18.
- Anti-Gallican party, 115, 118, 124, 125, 127, 151, 184. See also Junto, Parties in Congress, Congress.
- Aranda, Comte de, supports French policy, 40; character and influence of, 46, 47; negotiations with Jay, 211.
- Arnold, Benedict, failure of expedition to Canada, 24; treason of, 183.
- Bahama Canal, in convention between France and Spain, 106.
- Bahama Islands, demanded by Spain, 209.
- Beaumarchais, 44.
- Bonvouloir, sent to U. S., 29; mission of, 58.
- Boundaries of U. S., question of, 61, 138, 196, 201, 204; discussed by Jay and Florida Blanca, 141; opinions concerning, 118, 120, 123-126, 133, 174, 179, 185, 204, 205, 211, 212. See also United States, West, Canada.
- Bourbons, 14, 39, 43, 69, 93.
- British, 18, 19; trade of Mississippi, 19; attitude of concerning West, 10, 25; disaffection of in Canada, 22; power of in Northwest, 24; see importance of West, 25; distrust by France, 35; suspects Spain, 42; right to Mississippi, 60; aroused over territories, 74; offer concessions to the Americans, 76; suggest Spanish mediation, 97; policy of, 167; hold Northwest posts, 214. See also Great Britain.
- British Empire, 62. See also Great Britain.
- British ministry, policy of, 10.
- British politics, character of, 10.

- British traders, 13.
Burgoyne, Gen., surrender of, 59, 73, 74.
Burke, Thomas, of North Carolina, attitude of, 165, 166.
Cahokia, 18.
Campeche, Bay of, 101, 106, 107.
Canada, 9, 12, 15, 17, 61, 76, 83, 87, 88, 95, 96, 98, 100, 110, 117, 120, 121, 124, 126, 127, 131, 134, 143, 150, 155, 167, 168; importance of, 21; American attack upon, 24; plans to conquer, 67, 86, 166, 184, 190; proposed attack upon abandoned, 86; in negotiations for peace, 217.
Canadians, French, satisfied with British rule, 15, 21; D'Estaing's proclamation to, 86; uneasiness among, 87.
Cape Antoine, 173.
Caribbean Sea, 39.
Carleton, Sir Guy, alarmed at American designs on Canada, 23.
Carmichael, William, secretary to Jay, 138, 140.
Carolinas, claims of in West, 13.
Charles III, king of Spain, 97, 98, 101, 142; desires to maintain peace, 37, 38, 55, 96; opposes recognition of U. S., 53; fears Great Britain, 81; fears United States, 93.
Choiseul, Etienne-François, Duc de, interest in America, 8, 14, 15, 17; loses interest, 18.
Clark, George Rogers, expedition of, 114, 154, 191-194; conquests of, 155.
Colonial charters, force of, 157, 159, 168, 183; character of, 178; ignored by Madison, 186; views of Rayneval as to, 211.
Congress, 112, 139; desires Canada, 22; and question of boundaries, 61, 81, 173; elects commissioners to France, 62; proposes treaty with France, 62; seeks alliance with Spain, 62, 194; position on Floridas, 67, 153; territorial policy of, 67; demands right of navigation of Mississippi, 67; instructions of, 78; policy of, 84, 128, 145, 156, 157, 189, 190, 198, 199; plans invasion of Canada, 86, 87, 176; policy towards West, 108, 178, 187; fear of West, 119; factions in, 108, 115, 117-124, 126, 165, 166, 176, 178, 179, 180, 195, 206; character of, 124; committees of, 121; attitude of, 133, 134, 155, 157; position of, 177, 187; instructions to Jay, 179, 180, 195; opposes policy of France, 187; independence of, 188; anger of at Spain, 198; sounded by Luzerne, 201; demands of, 203; instructions of for negotiation of peace, 204, 208; views of, 214. See also United States.
Considerations, 31.
Convention between France and Spain, 104, 106, 107; character of, 107.
Cornwallis, Charles, 191, in South, 189.
Cumberland, British agent in Spain, 190.
Deane, Silas, elected American commissioner to France, 62; asks treaty with France, 64; proposes terms of alliance, 65. See also American commissioners.
Declaration of Independence, 61; and question of boundaries, 67.

- D'Estaing, Charles, Comte; memorial of, 16; arrives in America, 84; plans of, 85, 86; proclamation of to Canadians, 86; to act with Spanish fleet, 94; reverses of, 101; supports Spanish attack, 136.
- Detroit, 26, 85, 114, 191.
- Dunkirk, provision regarding in convention between France and Spain, 106; importance of this provision, 107.
- Dunmore, Lord, in Virginia, 25.
- East, 20, 25.
- East, party of, 121.
- Eastern Louisiana, desired by Spain, 9, 13, 60, 108, 116, 168-169, 184, 208, 209; demanded by Spain, 148.
- Family compacts, 8, 46.
- Finances of France, 101, 200.
- Fisheries (Newfoundland), 74, 79, 85, 94, 121, 123, 124; question of, 218; demands of Great Britain respecting, 222.
- Florida Blanca, prime minister of Spain, succeeds Grimaldi, 46; changes policy of Spain, 47; character of, 48; efforts to maintain peace, 49, 70, 75, 79; policy of, 49, 72, 80, 92, 94, 133, 134; seeks to recover former colonies of Spain, 50, 75, 79; prepares for war, 51; attitude towards United States, 52, 93, 104, 144, 148, 197; wishes Revolution to continue, 52; justifies Spanish armaments, 54; desires concessions from Great Britain, 55; distrusts France, 55; fears Great Britain, 79; blames France for war, 74; fears United States, 93, 103; dislike of for United States, 93; diplomacy of, 102; demands of, 102, 103, 147, 195; and French aid, 137; distrusted by Vergennes, 138; negotiations with Jay, 140, 141; sends Gardoqui to treat with Jay, 142; negotiations with England, 146; propositions for peace, 147; ends negotiations with Jay, 196; mentioned, 69, 70, 96, 98, 142, 150.
- Floridas, The, 9, 11, 13, 61, 65, 66, 67, 74, 76, 81-83, 96-98, 101, 102, 106, 110, 112, 113, 117-121, 124-128, 131, 134, 138-140, 150, 160, 170, 200; claimed by Spain, 26, 61, 80, 106, 148; offered to Spain, 65, 94, 95; attacked, 133, 136; importance of, 152; boundaries of, 161; desired by Great Britain, 210; in treaty of peace, 223, 224.
- Fort de Chartres, 13.
- Fort Stanwix, treaty of, 11.
- France, expulsion of from New World, 9; weakness of, 7, 28, 91, 148, 200; desires to humiliate England, 30; policy of, 43, 99, 100, 149, 150; plans to aid Americans, 43; cooperates with Spain, 91; alliance with Spain, 107; alliance with United States, 78, 108; urges attack upon Floridas, 142; desires peace, 146, 200; withdraws support from Americans, 183; attitude of towards United States, 205; on boundaries, 211; mentioned, 9, 15, 30, 32, 33, 44, 47, 58, 59, 61, 73, 75, 78-88, 91, 99, 101, 106-108, 116, 136-139, 149, 181.
- Franklin, Benjamin, views regarding West, 10, 25, 62, 139; arrives at Paris, 46; influence at French court, 46; seeks alliance with Spain, 55; character, 62; demands right to navigate Mississippi, 66, 145; his interview with Hutton, 76; insists upon independence, 76; asks indemnification,

76; insists upon immediate treaty with France, 78; refuses to reveal his plans, 133; supports Jay, 140; summons Jay to Paris, 211; begins negotiations with Oswald, 210; proposes settlement of boundaries, 217; negotiations with Oswald, 217-219; illness of, 219; part in later negotiations, 224; conciliates Vergennes, 225.

Frederick the Great, 7.

French agents in America, 15, 16.

French diplomacy, 9.

French *habitants*, in Illinois, 12.

French, in West, 13.

French interest in America, 14, 18, 52.

French party in Congress, 187, 188.

Gage, Gen. Thomas, plan to arouse West and to cut rebellion in two, 25.

Galvez, minister for the Indies, 48; character of, 49; friendship for America, 49.

Galvez, Bernardo de, governor of Louisiana, 53; seizes British vessels in Mississippi, 54, 60; aids Americans, 68, 103, 113; attacks the Floridas, 133; success on Mississippi, 137; campaign, 142; captures Mobile, 144; conquests of, 161; policy of, 192.

Gardoqui, secretary of Florida Blanca, negotiations with Jay, 144, 145; position of, 188.

Gates, Gen. Horatio, defeated in the South, 183.

George III, 14.

Georgia, 13, 132, 176, 200; held by Cornwallis, 189.

Gérard de Rayneval, Conrad, referred to in text as Gerard, minister to United States, 82; instructions of, 82; promises of, 84; attitude on invasion of Canada, 85; diplomacy of, 118; opposes Congress, 124; relations with Congress, 125; ends mission to United States, 129; character of his work, 129; mentioned, 86, 108, 109, 111, 112, 114-116, 121-123, 127, 130, 138-140, 152.

Gérard de Rayneval, M. See Rayneval.

Gibraltar, British defense of, 38, 40; desired by Spain, 75, 79, 104; difficulties of conquering, 96; France agrees to help conquer, 102, 106; demanded by Spain, 209; question of, 225; mentioned, 97, 101, 107.

Grantham, British ambassador to Spain, 41, 42, 54.

Grasse, Comte de, sent to America, 149, 201.

Great Britain, influence of in America, 21, colonial empire of, 7, 30; hostility of France to, 32, 33, 35, 41; and Portugal, 36; and Spain, 38, 42, 96, 98, 146; increases her armaments, 38; suspects Spanish policy, 41, 52, 54; and Spanish aid to Americans, 68; distrusted by Florida Blanca, 49; and France, 54, 71, 210; declares war against France, 79; and Vergennes, 88, 95; rejects Spain's offer of mediation, 101; and the West, 108, 214; attitude of Spain towards, 132, 147, 148, 157, 197; rights of discussed, 143, 159, 186, 211; policy of, 167, 221, 222; and navigation of the Mississippi, 226.

Great Lakes, 26.

- Grenada, 70.
Grimaldi, Marquis de, friendship of for France, 36, 37; and Great Britain, 38, 42; character of, 40; prepares for war, 41; and France, 41, 45; desires peace, 43; succeeded by Florida Blanca, 46; mentioned, 71.
Halifax, 86, 88, 96.
Havana, Spain despatches troops to, 51.
Henry, Patrick, governor of Virginia, 67.
Holker, M., agent of Vergennes in U. S., 39.
Honduras, Gulf of, 101, 102, 106, 107.
Hutton, chief of Moravians, interview with Franklin, 76.
Huntington, Samuel, president of Congress, 164; urges moderation, 182.
Illinois, mentioned by D'Estaing, 16; loss of population, 18; trade of, 19; Clark in, 114; American interest in, 15; Spaniards in, 192.
Independence of U. S. recognized by France, 77; Oswald's instructions, 219.
Indians, and the West, 11, 12, 109.
Ireland, 70.
Jamaica, desired by Spain, 40, plans to conquer, 70, 81, 102.
Jay, John, attitude of regarding West, 25, 114; and French interests, 120, 125; elected to negotiate treaty with Spain, 128; alienated from French, 129, 181; arrives in Europe, 138; negotiations with Spain, 138, 140, 141, 144, 145, 195, 196; dispatches of, 173, 189; instructions to, 176, 179, 181, 185, 186, 195; failure of his mission, 198; arrival of at Paris, 211; negotiations of with Aranda, 211; and Oswald, 218, 219, 223, 224; character of, 219; and Europe, 219; distrusts French designs, 219-221; and Rayneval's mission, 220; and the Floridas, 223, 224.
Jenifer, Daniel of St. Thomas, and French policy, 124; attitude of, 165, 166, 176, 180, 181; on instructions to Jay, 179; memorial of, 182, 183.
Jesuits, driven from Spain, 46.
Jones, Joseph, of Virginia, opposes claims of Spain, 174, 175.
Junto, in Congress, found, 120; opposes Gerard, 126; broken up, 165.
Kalb, Baron de, mission to America, 15, 18; reports of, 29.
Kaskaskia, 18, 193.
Kentucky, County of, 25; Americans in, 113; declares independence, 164; mentioned, 154.
La Balme, 192, 193, 194.
Labrador, 61.
Lafayette, Marquis de, plan of for invasion of Canada, 85, 87.
Lake Nipissing, boundary of Quebec, 11.
Lee, Arthur, seeks aid of Spain, 52, 53; mentioned, 74.
Lee, R. H., opposition of to French plans, 122, 126.
Lees, family of, 120, 181.
Lexington, report of battle of, 30.
Livingston, Robert R., views on boundaries, 208.
Louis XV, 14, 18.

- Louis XVI, importance of accession to the throne, 27; writes to Charles III, 142.
- Louisiana, 13-15, 17, 18, 20; preparations to defend, 51; threatened with attack, 53; rebellion in, 92; British in, 101; Americans retreat into, 103; importance of to Spain, 131; Galvez governor of, 142.
- Loyalists, British, 51.
- Luzerne, Chevalier de la, minister to U. S., 129, 151; negotiations of, regarding West, 153, 154, 157, 164, 166; opposes conquest of Canada, 155; friendship of for Spain, 157, 167, 168, 170, 172, 175, 176; opposes claims of U. S., 159, 168, 173; attacks anti-Gallicans in Congress, 177; mentioned, 130, 133, 149, 187, 190, 195; approves conquest of Northwest, 194; promises of, 205; views on boundaries of U. S., 205-207.
- Madison, James, writes instructions to Jay, 180, 185-187; views of on West, 180, 185, 186.
- Manchac, 103.
- Marbois, M., opposes radicals in Congress, 177, 184; attitude of on West, 178, 185, 187; on opinions of Madison, 180; relations with Congress, 182, 189; letter of, 219.
- Marie Antoinette, and Vergennes, 28.
- Maryland, position of on the West, 165, 181.
- Maurepas, Comte de, prime minister, 27; asks for peace, 200.
- "Mémoire Historique et Politique sur la Louisiane,"* 30.
- Mexican fleet, arrives in Spain, 94.
- Mexico, Gulf of, 39, 68, 80, 96, 106.
- Michigan, Lake, 174.
- Minorca, desired by Spain, 40, 106.
- Miralles, Don Juan de, negotiations with Congress, 67; seeks exclusive navigation of Mississippi for Spain, 67; relations with Gerard, 83, 88; opposes American policy, 108-111; Spanish instructions to, 140; negotiations of regarding West, 153; alarmed at policy of U. S., 163; mentioned, 115, 136, 139, 162, 170, 177, 181.
- Mississippi River, navigation of, 60, 61, 66-68, 77, 84, 108-111, 113, 115, 116, 118-128, 131, 134, 135, 137-139, 141, 143-145, 148, 150-152, 157-161, 163, 170, 173, 175, 176, 181, 184-186, 190, 191, 195, 196, 199, 220, 225, 226; plans to fortify, 44; views of Rayneval, 211; boundary of U. S., 95; British on, 102; Spain desires, 103; American interest in, 115; control of, 208, 209; mentioned, 7, 121, 202, 210.
- Mississippi Valley, desired by Spain, 80; question of, 213; mentioned, 16, 19, 45, 121, 192, 195, 198.
- Mobile, 18, 51, 66, 96, 137.
- Montgomery, Gen., failure in Canada, 24.
- Montmorin, Comte de, French ambassador to Spain, 74, 94, 97, 105, 106, 133, 146, 226; asks alliance of Spain, 74; explains French policy, 81; and Spanish negotiations with Great Britain, 142; and U. S., 147; advises Jay, 195; and Florida Blanca, 197.

- Montreal, 22; fall of, 24.
Morris, Gouverneur, and Gerard, 109, 110, 112, 116; attitude regarding West, 110; a partisan of France, 120; alienation of from France, 181.
Natchez, 18.
New England, and the West, 184.
New Englanders, 22, 62, 106.
Newfoundland, 62, 106. See Fisheries. t
New France, 14, 33.
New Orleans, 13, 17, 18, 87, 210; a depot for American supplies, 68.
New York, 98, 100; and West, 185.
North America, 60.
North Carolina, 24.
North ministry, downfall of, 216.
Northwest, and the colonial charters, 12; British traders in, 19; troops withdrawn from, 20; British control of, 24, 25; Americans in, 113; boundary, 121; British in, 191; importance of, 194.
Nova Scotia, 61, 62, 76, 83, 88, 121, 123-127.
Ohio County, settlement of, 11, 115.
O'Reilly, Spanish governor of Louisiana, 15.
Ossun, Marquis de, French ambassador to Spain, urges Spain to prepare for war, 40; and Florida Blanca, 54; to Vergennes, 61.
Oswald, Richard, negotiations with Franklin, 216; position regarding Canada, 217; instructions of, 218; writes for new commission, 219; agrees to treaty with U. S., 220.
Pacte de Famille, the, 36, 97.
Paris, treaty of, 9, 14.
Peace, negotiations for, 216, 217 et seq.; treaty of, 226.
Pennsylvania, 25.
Pensacola, 51, 66, 96, 137.
Pollock, Oliver, at New Orleans, 68.
Pontleroy, French agent in U. S., 15.
Porto Rico, 39, 51.
Portugal, Spain desires to conquer, 43.
Proclamation of 1763, 11, 157, 159, 160.
Quebec, government of, 11; conquest of, 86, 88.
Quebec Act, 11, 60, 116, 122; influence of in French opinion, 60.
Rayneval, M. Gerard de, *Reflexions* of, 31; desires to recover French colonies, 33; treats with American commissioners, 77; mission to London, 209, 210; his views on boundaries of U. S., 211, 212.
Rhode Island, 98, 100.
Rodney, Admiral, victory of in West Indies, 209.
Roman Catholic religion, in Quebec, 21.
Russia, and territorial expansion in America, 198.
St. Augustine, 85.
St. Domingo, 39, 41, 106.

St. Lawrence River, 11, 84, 110.

St. Louis, 13, 18.

Senegal, 106.

Seven Years War, 7, 9, 12, 13, 91.

Shelburne, Earl of, president of board of trade, 10; fears Americans, 75; interview of with Rayneval, 209, 210; demands of for peace, 210; policy of, 216, 218; sends Oswald to Paris, 216; concedes terms of U. S., 225; offers terms to Spain, 225.

South, party of the, 121; attitude of the, 167; disasters in the, 183; British successes in, 190.

South Carolina, 123; Rutledge governor of, 167-168.

Southwest, contentions over, 152.

Spain, 15; claims the Floridas, 21, 26, 66; her policy of peace, 20, 82; dispute with Portugal, 36; fears Great Britain, 37; unprepared for war, 39; opposes French plans, 40; fears U. S., 40, 44, 169; diplomacy of, 43, 167, 168; refuses to treat with Lee, 53; willing to aid Americans secretly, 53, 67; claims Mississippi Valley, 57; claims exclusive navigation of Mississippi River, 61, 167, 226; ambitions of, 65; position on boundaries of U. S., 66; interests in Gulf of Mexico, 66; hatred of for Great Britain, 80; and West, 90, 116, 150, 186, 191, 192; wishes to recover colonies, 92; policy of, 99-101, 105-107, 117, 131, 132, 141, 149, 174, 179, 180, 198, 200, 203, 208, 209; opposes independence of U. S., 105, 130; declares war against Great Britain, 107; contention of with France; 107; alliance of sought by U. S., 119; and U. S., 128; negotiations of with Great Britain, 142, 146; victories of on Mississippi, 183, 190; expedition across Illinois, 192; failure of her plans, 225; accepts terms of peace, 225; demands Bahama Islands, 209; mentioned, 15, 108, 112, 114, 122; see Mississippi, Floridas, Florida Blanca.

Spanish, 18, 19; mediation of, 96-98.

Stormount, Lord, British ambassador to France, suspects Vergennes of aiding Americans, 71; expects war, 73.

Strachey, British minister for negotiations of peace, character of, 222.

Tennessee, 11, 12, 113, 154.

Territories, an issue in the Revolution, 26.

Townshend, Thomas, policy of, 217; disavows treaty with U. S., 220; opposes American position on the Floridas, 224.

Treaty of 1763, 7.

United States, desires West, 9; claims the Mississippi, 57; treaty of alliance with France, 79, 108; opinions concerning, 82, 83; boundaries of, 83, 100, 109, 116-127, 132, 133, 135, 139, 143, 150, 157, 178, 186, 208, 210, 217-220; and Vergennes, 88; independence of, 96, 98, 99, 142, 150, 202; policy of regarding the West, 108, 112, 117, 157, 158; claims to West, 113, 152, 154, 159, 190, 203; and Spain, 114, 162; and the Floridas, 157; and navigation of the Mississippi, 157; and the several states, 181; disasters of, 183; parties in, 206; and treaty of peace, 210; position of, 214; boundaries of proposed by Strachey, 222; views on peace, 227.

- Uti possidetis*, 132-134, 156, 196, 200, 205; urged by Spain, 146, opposed by France, 147.
- Utrecht, treaty of, 106, 107.
- Vaughan, Benjamin, sent to London by Jay, 220.
- Vera Cruz, 51.
- Vergennes, Charles Granière, Comte de, minister of foreign affairs, 8, 27; character of, 27; policy towards Great Britain, 28; favors rebellion in America, 28, 33; sends Bonvouloir to America, 29; opposed to colonial expansion of France, 29, 33, 50, 74; policy towards America, 32, 58, 65, 81, 148, 169, 172; program of, 33-36; suspects Great Britain, 33, 38, 39, 44, 55, 60, 96; declines use of New Orleans, 45; defends French armaments, 54; suggests conquests for Spain, 56; and British colonies, 56, 74; urges Spain to form alliance with U. S., 57, 140, 141, 143; his knowledge of America, 58; opinions of on West, 60, 65, 90, 104, 111, 139, 151, 163, 170, 185; and navigation of Mississippi, 60, 226; and U. S., 65, 134, 136, 144; desires war, 69, 70, 72; decides on war, 73, urges war, 75; aids Americans, 72; seeks cooperation of Spain, 73, 74, 82, 91-93; fears reconciliation of British and Americans, 77; and Canada, 87, 88; policy of, 97-99, 103, 116, 117, 129, 130, 139, 140, 150, 170-172, 190, 199, 201, 202; and Spanish demands, 103, 104, 170-172; offers treaty to Spain, 104; and Spain, 105, 132, 137, 169, 209; and convention with Spain, 107; alarmed at American conquests, 114; instructions of to Luzerne, 135, 136, 157; distrusts Spain, 137, 138; and independence of U. S., 143, 146; on terms of peace, 147, 213; and policy of U. S., 155, 156, 188; difficulties of, 200, 204; and boundaries, 201, 202, 205, 210, 212, 213; friendship of for U. S., 210, 214, 215; and treaty of peace, 216, 217; advice of, 219.
- Versailles, Court of, 16, 36, 52.
- Virginia, 13, 24, 120, 122, 191; tobacco of, 59; interest of in West, 139, 164; claims West, 152, 154; demands of, 207, 214.
- Washington, George, attitude towards West, 24, 25; plans to attack Canada, 23, 84-86; and attack on Canada, 87, 89, 153; receives money from France, 149; plans of, 189, 190, 192.
- Watauga Association, 25.
- West, The, British policy towards, 10; claims of different nations to, 24, 26; in early Revolution, 25; opinions regarding, 25, 60, 63, 65; Franklin's opinion of, 25, 63, 84, 177; Vergennes's opinion of, 60, 65; Miralles's opinion of, 84; Gerard's opinion of, 84; disputes over, 89; claims regarding, 163, 168; position of, 184; question of, 199, 202, 210; mentioned, 66-68, 108-111, 113-117, 120-124, 131, 139, 150, 153, 154, 157-159, 164-168, 173, 174, 178, 196, 226. See United States, Spain, Mississippi.
- West Indies, 47, 51, 69, 70.
- Willing, Capt., at New Orleans, 113.

359
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BY

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CONTENTS

CHAPTER I

	PAGE
THE MONETARY SITUATION IN ILLINOIS PREVIOUS TO THE ESTABLISHMENT OF BANKS	6

Few white settlers in Illinois before 1817—Scarcity of money—Animal skins formed principal medium of exchange.

CHAPTER II

THE TERRITORIAL BANKS	9
-----------------------------	---

Four banks chartered—Provisions of the charter of the Bank of Illinois—History of its operations—Provisions of the charter of the Bank of Edwardsville—Its history—The Edwards-Crawford controversy—Provisions peculiar to the charters of the Banks of Cairo and Kaskaskia—Their failure to operate—Review of conditions during the period—Analysis of the banks' statements.

CHAPTER III

BANKING A STATE MONOPOLY	22
--------------------------------	----

Provisions of the Constitution of 1818 concerning banks—First state bank chartered—Failure to operate—Second state bank chartered—Opposition to the project—Provisions of the charter—State bank notes issued to needy inhabitants of the state—Rapid depreciation of the notes—The Coles investigation—Remedial and relief legislation—The Edwards investigation—Further remedial and relief laws adopted—Measures for the final settlement of the bank's affairs—The Wiggins loan—The Duncan affair—Further relief legislation—Analysis of the bank's statements—Extent of the state's loss.

CHAPTER IV

BANKING AND INTERNAL IMPROVEMENTS	59
---	----

No local banks of issue from 1831-35—Demand for new state bank—New state bank chartered—Provisions of the charter—Old Bank of Illinois revived—Bank of Cairo opened—Contest for control of state bank—Early operations of the bank—Effort to obtain government deposits—Internal Improvement mania seizes Illinois—State becomes majority stockholder in state bank and in Bank of Illinois—Legislative investigation—Panic of 1837—Banks suspend—Suspension legalized—Crisis of 1839—Banks again sus-

pend—Investigation of state bank reveals excessive loans to speculators—Banks and state in desperate situation—State bank forced to resume—Suspension again authorized—Bank management becomes reckless—Banks close their doors—Analysis of their balance sheets—State bank placed in liquidation—Progress of the settlement—Terms of the Bank of Illinois liquidation bill—Progress of the settlement of its affairs—History of the Bank of Cairo—Illegal banking in Chicago.

CHAPTER V

THE FREE BANK SYSTEM OF ILLINOIS 131

No banks of issue from 1843-51—New constitution provides for general banking law—Free bank system adopted—Provisions—Few banks established at first—Amendments of 1853 put an end to illegal issues—Bank commissioners' recommendations—Panic of 1854—Auditor's report and recommendations, 1855—Large amount of foreign paper in Illinois—Amendments of 1857—Panic of 1857—Rapid increase in number of banks—Secession of South causes collapse of the Illinois banking system—Comparative study of different types of Illinois banks—Legislature reconstructs banking system—Constitution of 1862 providing for abolition of incorporated banks, rejected—Effect of national banking act and ten per cent tax law—Legislature abolishes banks of issue.

PREFACE

Early Illinois banking passed through four distinct cycles. The first originated and reached its climax between the years 1814 and 1819. The second began in 1821 and reached a culmination in 1824-25. The mania for internal improvements in the thirties caused the development of a third movement which came to a climax in 1837. The adoption of the stock bank system in 1851 began the fourth cycle which attained its highest point in 1860.

The results of this study show that in each of these movements events follow a regular sequence: (1) An urgent demand on the part of a needy community for a plentiful medium of exchange; (2) The passage of a law providing for a generous issue of poorly safeguarded paper; (3) A brief period of fictitious prosperity largely due to speculation; (4) A crisis which at first results in the suspension of redemption and later in the collapse of the bank of issue; (5) Hard times; (6) The development of a strong anti-bank sentiment; (7) The beginning of the next cycle after a surprisingly brief interval.

The method of treatment followed has been to outline the laws passed by the legislature and to show two things: (1) The causes which led to the enactment of the measures; and (2) The effect which the legislation produced upon the community.

The material has been gathered from legislative records, newspapers, banking journals, county and state histories, and the letters and biographies of prominent men. Special mention is due the invaluable treatise of Governor Thomas Ford who was present at practically every session of the legislature before 1846. The general works of Knox and Sumner and the monograph on "State Banks of Issue in Illinois" by Garnett have proved useful in checking up conclusions drawn from common sources.

The thanks of the writer are especially due to Professor E. L. Bogart and Doctor C. M. Thompson who have read the manuscript of this study and made many valuable suggestions. He is also indebted to the other members of the department of economics at the University of Illinois for numerous helpful suggestions.

CHAPTER I

THE MONETARY SITUATION IN ILLINOIS PREVIOUS TO THE ESTABLISHMENT OF BANKS.

The first white settlements in Illinois were colonies founded by French traders and missionary priests along the Mississippi River. For local purposes these colonies made use of Indian currency and pelts of wild animals or of the certificates of deposit issued by the royal warehouses in payment for furs.¹ The few commodities received from the outside world were paid for by shipments of corn, pork and skins "down the river". Little had been done toward developing the resources of the territory when France gave way to England in 1763.²

The coming of the English soldiers in 1765 caused some of the two thousand French settlers to cross over to the western bank of the Mississippi, but on the whole conditions remained unchanged during the brief period of British rule.³

After 1778 when George Rogers Clark took possession of Illinois, the best element of the French population migrated across the river and French influence upon Illinois history was soon effaced. Moreover, American settlers for a time came very slowly and it was not until 1800 that the population of Illinois again approximated 2500, the point it had reached fifty years before under the French. During the next decade a somewhat larger tide of immigration set in but it was not until the close of the war of 1812 that there was a serious demand for banks.⁴ The people with the exception of a few small merchants

¹Thompson, *The Monetary Situation in Nouvelle France*, *Journal of the Illinois State Historical Society*, iv, 136.

²Thwaite, *Jesuit Relations*, lxix, 143 ff.

³Alvord, *Illinois: The Origins*, 9 ff.

⁴*Ibid.*

were engaged in agriculture and the few needs of the family were supplied at home. The flax field and the flock of sheep provided the raw material for the housewife's spinning wheel and loom, while the house and its furniture were constructed of the crude materials at hand.⁵ In 1802 it was estimated that not one pioneer in ten possessed a single dollar in specie.⁶ In fact, long after the state was admitted to the Union, the receipt of a letter involved a considerable search on the part of the recipient for the twenty-five cents in specie which was the usual postage on letters from the East.⁷ As far as the few local transactions were concerned, the pelts of the beaver, the raccoon, the wolf, and the deer were universally acceptable and for a long time continued to serve as money in the more backward portions of the state.⁸ "Wolf scalps were as good as county orders and with bear, deer and 'coon skins were exchangeable for tax receipts."⁹ When the publisher of one of the early Illinois newspapers found it impossible to meet his bill for paper in any other way, he shipped to his eastern creditor nine and a half dozen deer skins valued at six dollars apiece.¹⁰ The occasional pieces of money which found their way into the West were eagerly seized upon by the merchants and used in making remittances to the East. In like manner the few notes of the United States Bank which reached the West were even more eagerly sought after on account of the smaller risk attached to sending them.¹¹ In 1810, according to the census of that year, there were only 12,284 persons in Illinois, and what little immigration there was was checked

⁵Perkins and Peck, *Annals of the West*, 714; Ford, *History of Illinois*, 41; Smith, *St. Clair Papers*, ii, 438, 439. Boggess, *The Settlement of Illinois, 1778-1830*, 21-2

⁶Michaux, *Travels*, 226.

⁷Heylin, *History of Fulton County*, 702.

⁸Ford, *History of Illinois*, 43; Clarke, pub., *History of Pike County*, 104; Goodspeed, pub., *History of Gallatin, Saline, Hamilton, Franklin and Williamson Counties*, 113.

⁹Goodspeed, pub., *History of Gallatin, etc., Counties*, 236.

¹⁰*Ibid.*, 113.

¹¹Michaux, *Travels*, 127.

by the outrages of the Indians before and during the War of 1812.¹²

The close of the war marks a distinct transition in the economic life of the people of Illinois. In the first place there was a large influx of settlers who brought some money with them and thus created a demand for a better medium of exchange than animal pelts. Secondly, better agricultural methods were introduced. The new settlers instead of spending a large part of their time in hunting and fishing, improved their land and built substantial buildings upon it.¹³ Steamboats now plied between St. Louis and the ports on the Ohio and Mississippi with the result that Illinois produce could be marketed at a profit and pieces of money became less of a curiosity to the Illinois farmer.

Lastly, the passage of a liberal land law had stimulated the purchase of Illinois farms to such an extent that two land offices were established in the territory and by 1816 over half a million acres were sold.¹⁴ The whole period from 1814 to 1819, in fact, is characterized by the rage for speculating in farms and town lots, accompanied by a persistent clamor for a plentiful supply of currency. For this reason, the chief function of a western bank seems to have been to manufacture paper money and issue it on easy terms to the ambitious but impecunious inhabitants.

¹²Greene, *Government of Illinois*, 119.

¹³Reynolds, *My Own Times*, 176; Boggess, *The Settlement of Illinois, 1778-1830*, 118 ff.

¹⁴Ford, *History of Illinois*, 43.

CHAPTER II

THE TERRITORIAL BANKS.

The members of the territorial legislature were subjected to constant pressure by their constituents to follow the example of Ohio and Kentucky in each of which states there had been established a number of private banks.¹ They at length yielded to this demand and at their sessions of 1816-17 and 1817-18 granted charters to the following institutions: the Bank of Illinois, the Bank of Edwardsville, the Bank of Kaskaskia and the City and Bank of Cairo.

The Bank of Illinois was located at Shawneetown, a thriving settlement on the Ohio River just below the mouth of the Wabash. The United States saline works which produced about three hundred thousand bushels of salt a year were only a few miles away, while a large part of the tide of immigration made this point its first stopping place in Illinois. At the time the bank opened there were five hundred inhabitants, a number of stores and taverns, a newspaper office, a United States land office and a private bank, established in 1813.² The business of the last named enterprise, however, passed into the control of the Bank of Illinois.³

The charter granted to "the President and Directors of the Bank of Illinois" contained the following provisions: The capital stock of three hundred thousand dollars was divided into shares of one hundred dollars each; one third of them to be reserved for the territory or the prospective state of Illinois, if the legislature cared to purchase them. Business was to begin when fifty thousand dollars had been subscribed and ten thousand paid in.⁴ No limit

¹Ford, *History of Illinois*, 43.

²Woods, *English Prairie*, 129, 130; *Report of the Comptroller of Currency*, 1876, p. 29; Moses, *Illinois Historical and Statistical*, i, 263.

³Knox, *History of Banking in the United States*, 712.

⁴*Laws of Illinois*, 1816-17, p. 11 ff., Section 1.

was placed upon the shares one person could own, but during the first ten days of subscription no one could subscribe for more than ten shares per day. Owing to the scarcity of specie the payment of only ten dollars down in gold or silver was required, the rest to be paid in notes of other banks at the discretion of the directors so long as not more than twenty-five per cent of the whole was asked for at any time and that after sixty days' notice.⁵

The corporation was to continue for twenty years, and during its life could acquire property to the extent of five hundred thousand dollars.⁶ Its twelve directors must be resident citizens of Illinois chosen by a plurality vote of the stockholders. Holders of one to two shares had one vote; two to ten shares, one vote for every two shares; ten to thirty shares, one vote every four shares; and so on, the proportionate influence of the larger stockholders lessening as the size of their holdings increased.⁷ Fifteen or more shareholders owning not less than fifty shares could hold a meeting and appoint three of their number to examine the books and papers of the bank.⁸

The corporation could hold no lands except such as were necessary for the accommodation of its business and those mortgaged as security for loans or bought at judgment executions in the bank's favor. Its debts were not to exceed twice the capital actually paid in, money on deposit not being taken into consideration. If the directors violated this provision they were personally liable for the excess; but if a director could prove that he was not present or that he voted against the violation of the charter he was exonerated.⁹

In its dealings the corporation was limited to bills of exchange, gold and silver, goods pledged and not redeemed and goods produced on the bank's lands. The

⁵*Laws of Illinois*, 1816-17, p. 11 ff., Section 2.

⁶*Ibid.*, Section 3.

⁷*Ibid.*, Section 7.

⁸*Ibid.*, Section 7, Clause 1.

⁹*Ibid.*, Clause 7.

rate of discount was never to exceed six per cent. If at any time the bank suspended specie payment the holder of the obligation upon which the payment in specie was refused could collect twelve per cent interest until he received his money.¹⁰

The committee appointed to receive subscriptions having secured the necessary ten thousand dollars in specie, the bank opened for business January 1, 1817. Shortly afterwards, Secretary Crawford of the United States treasury asked the United States Bank to designate certain banks as additional depositaries of government funds, but the arrangement was so unsatisfactory that it was terminated the next year. Mr. Crawford himself thereupon designated certain banks as "agents of the treasury", among them the Bank of Illinois.¹¹ Under the agreement which went into effect February 1, 1819, the bank received and deposited to the credit of the treasury all current notes of such banks as maintained cash payments, but it had the power to refuse to receive the notes of any bank upon giving the receiver reasonable notice. All drafts upon it by the United States treasurer were to be paid at sight and all amounts above the fixed sum of fifty thousand dollars allotted to the bank as a permanent deposit must be sent to a branch of the United States Bank.¹² If the treasurer desired to pay a sum of money in the neighborhood of Shawneetown he could do so even if the bank were left with less than fifty thousand dollars. The Bank of Illinois was required to make monthly reports of its own condition and of its account with the federal government. Every quarter it was required to add to the regular monthly report a list of its debtors and the amount of their obligations. The privilege of retaining within the community a large share of the money collected by the

¹⁰*Laws of Illinois*, 1816-17, p. 11, Section 7, Clause 9.

¹¹*Niles' National Register*, xxvi, 290; U. S., H. of R., 18 Cong., 1 Sess., Doc. no. 128, p. 4.

¹²A messenger from the bank carried the money in person to New Orleans or Louisville, often undergoing great danger and hardships. U. S., 18 Cong., 1 Sess., *Report of the Secy. of Treas.*, 444, 525, 545, 551, 565.

local land office meant much to the people of Shawneetown as well as to the bank, for the strict supervision by the federal government prevented any serious deviation from the course of legitimate banking.

Although the bank was required to meet its obligations in specie, the legislature during the same session at which the charter was granted, passed a law providing that all executions should be subject to a stay of one year unless the party bringing judgment should agree in writing to accept in payment of the execution the notes of the Bank of Illinois and several other western banks.¹³ Since the legislature was not permitted under the federal constitution to make the notes legal tender¹⁴ recourse to such devices as the above was necessary in order to protect the debtor class which formed a large part of the population of the territory. The members of the legislature justified the act by the assertion that it would have been utterly impossible for payment to be made in specie without great sacrifice of property.¹⁵ This act, while it worked injury to the bank as a creditor, was beneficial in so far as it stimulated the circulation of its notes.

In spite of the fact that the Bank of Illinois enjoyed an unusually good reputation for conservative management,¹⁶ its progress was impeded by the attacks of its enemies. A feeling of jealousy existed between the towns of Kaskaskia and Shawneetown and between the Bank of Missouri at St. Louis and the Bank of Illinois. According to President Marshall of the latter bank, the receiver of public moneys at Kaskaskia pursued the policy of shaking the public confidence in the Shawneetown bank by one day accepting its bills in payment of dues to the

¹³The list included the banks of Cincinnati and Chillicothe in Ohio, any bank in Tennessee or Kentucky and the banks of Vincennes and Missouri. *Laws of Illinois*, 1816-17, p. 20, Section 1.

¹⁴Article 1, Section 10.

¹⁵*Laws of Illinois*, 1816-17, p. 20.

¹⁶*The Edwardsville Spectator*, August 28, 1821; Gouge, *The Curse of Paper Money and Banking*, 91, n.; *Niles Register*, xviii, 78; Moses, *Illinois Historical and Statistical*, i, 263; Andreas, *History of Chicago*, i, 526.

government and the next day refusing them.¹⁷ The Bank of Missouri went a step farther in its hostility toward its weaker rivals. It would refuse to accept their notes for a time and then, in order to present a large amount for redemption, would accept them freely. On one occasion a representative of the Missouri bank appeared at the counter of the Bank of Illinois and obtained twelve thousand dollars of its small supply of specie in exchange for Bank of Illinois notes.¹⁸ The Bank of Missouri seems to have been an especial favorite at Washington for it received an unusual share of the government deposits. It was thus able to exercise a powerful control over its weaker competitors. "Between powerful neighbors and domestic enemies,"¹⁹ the organization and successful conduct of a pioneer bank must have required a considerable degree of ability and courage.

In spite of a severe financial stringency extending over two years, the Bank of Illinois continued to carry on its business and succeeded in maintaining specie payment until long after the banks of older states had suspended.²⁰ A few days before suspension was voted, the directors had declared a dividend of eight per cent. The editor of the *Edwardsville Spectator* attributed this to the government funds on deposit, but the *Shawneetown Gazette* replied that the bank enjoyed a good healthy business irrespective of federal deposits and had never refused to redeem a note on demand.²¹

The continued struggle in the face of conditions which seemed to have no prospect of improvement at last (1823) forced the bank to suspend operations. By a succession of compromises with its debtors and creditors it managed to redeem all of its outstanding notes so far as they were

¹⁷Letter of Marshall to Edwards, in *Edwards' Papers*, 155.

¹⁸*Ibid.*

¹⁹*Ibid.*

²⁰Gouge, *The Curse of Paper Money and Banking*, 91, n.; *Bankers' Magazine*, ix, 11; U. S., 18 Cong., 1 Sess., *Report of Secy. of Treas.*, 426, 570.

²¹*Shawneetown Gazette*, quoted in *Edwardsville Spectator*, August 28, 1821.

presented; but other liabilities, among them a balance of \$28,367.85 belonging to the federal government, could not be met.²² When, however, after a lapse of fourteen years the bank was reopened under circumstances which will be discussed later, a settlement was made with the United States, and several hundred dollars worth of the original note issue was redeemed.²³

The next bank to be established in Illinois was the Bank of Edwardsville, which received its charter in 1818. Edwardsville, though but a few miles from St. Louis, was a town of considerable importance and a rival of Kaskaskia and Shawneetown for the honor of being the leading commercial center of the territory. The provisions of the charter of the Bank of Edwardsville differed from those of the Bank of Illinois in the following minor details: (1) The bank could begin business when five dollars in specie or bills of specie paying banks had been paid down on each share;²⁴ (2) There was no restriction as to the number of shares to be subscribed for by one person;²⁵ (3) The bank was not confined to a six per cent discount as the Bank of Illinois had been, but could charge the "legal rate;"²⁶ (4) Instead of the cumulative plan of voting, the "one share one vote" plan was provided.²⁷

The stock was placed on sale by a committee of prominent business men of Edwardsville and when, late in the year 1818, the requisite ten thousand dollars in specie, or its equivalent, had been received the bank began business.²⁸ In the year or more that had elapsed since the

²²U. S., H. of R., *Letter of Secy. of Treas.*, 1838, Doc. no. 79, 780; Andreas, *History of Chicago*, i, 526; Knox, *History of Banking in the United States*, 714.

²³U. S., H. of R., *Letter of Secy. of Treas.*, 1838, Doc. no. 79, 780; *U. S. Reports on the Finances*, 1829-36, p. 605.

²⁴*Laws of Illinois*, 1817-18, p. 65, Section 2. The charter of the Bank of Illinois required the payment of ten dollars in specie.

²⁵*Ibid.* Under the Bank of Illinois charter no one person could subscribe for more than ten shares per day during the first ten days.

²⁶*Ibid.*, 69, Section 7, Clause 7.

²⁷*Ibid.*, 68, Section 7, Clause 1.

²⁸Knox, *History of Banking in United States*, 713; U. S., H. of R., 18 Cong., 1 Sess., Doc. no. 133.

organization of the Bank of Illinois, conditions had become less favorable for further banking enterprises; hence the Bank of Edwardsville had an even more trying situation to face than did the former institution.²⁹

A few months after the bank began its operations the directors called for the payment of the second instalment on the shares of stock, but the financial situation throughout the country was such that more than five thousand shares had to be declared forfeited for non-payment.³⁰ Among the letters of Ninian Edwards, one of the directors of the bank, is one from Richard M. Johnson, afterwards vice-president of the United States, protesting against such action in the case of General Payne. Johnson intimates that those who had been credited with making a second payment probably were accorded the questionable privilege of borrowing the money from the bank and using their shares as collateral security.³¹

Through the offices of Edwards, who was then a senator from Illinois, the secretary of the treasury designated the Bank of Edwardsville as well as the Bank of Illinois a depository of government funds. The conditions noted in the case of the latter bank applied also to the former save that the permanent deposit of the Edwardsville bank was but forty thousand dollars instead of fifty thousand.³² Although Edwards did not approve of Crawford's system of letting out among a large number of banks funds which should have been cared for by the Bank of the United States, he preferred that the western Illinois collections should be placed in his bank rather than that they should be sent to the Bank of Missouri.³³ Shortly after securing

²⁹Letter of Marshall to Edwards, in *Edwards Papers*, 155.

³⁰*Niles' Register*, xvii, 186.

³¹*Edwards Papers*, 162; see U. S., H. of R., 18 Cong., 1 Sess., Doc. no. 133, pp. 44, 109. General Payne was the brother in law of Johnson. The members of the Johnson family are said to have held a controlling interest in the Bank of Edwardsville and to have used their political prestige to influence Secretary Crawford's dealings with the bank.

³²*Niles' Register*, xxvi, 291. U. S., H. of R., 18 Cong., 1 Sess., Doc. nos. 128, 133.

³³*Niles' Register*, xxvi, 141.

this favor for the two Illinois banks, Senator Edwards returned to Illinois only to find that the Edwardsville bank was having a hard time with the adverse business conditions which then prevailed.³⁴ It seemed to have even greater difficulty than the Bank of Illinois in withstanding the severity of the commercial depression and the onslaught of their common enemies, the Bank of Missouri and the receiver of the public moneys at Kaskaskia.³⁵ The directors of the Shawneetown bank, mindful of the struggle that attended the launching of their project, were on the whole friendly in their attitude toward the Bank of Edwardsville, although in the spring of 1819 they found it necessary to forbid their cashier to receive its notes.³⁶ This action was rescinded soon, however, for the officers of both banks realized that they could ill afford to exercise any but the most liberal policy toward each other's paper. In fact, John Caldwell, an officer of the Bank of Illinois suggested to Senator Edwards that at certain times each bank should inform the other as to the amount of the other's notes held by it and should make a practice of sending these notes as far as possible from the bank which issued them. He urged that neither bank present the notes of the other for redemption unless "dire necessity compels the unpleasant measure."³⁷

As business conditions were daily growing less favorable to the bank's success, Senator Edwards decided that he could no longer shoulder the responsibility for the safety of the United States deposits which he had procured for the bank. Consequently, he decided to sever his connection with the bank's management, and asked President Stephenson to notify Secretary Crawford of his action. Since Mr. Stephenson was also receiver of public moneys at Edwardsville, Mr. Edwards urged him to withhold from the bank all government funds in his possession until Mr. Crawford had had an opportunity to take whatever action

³⁴*Niles' Register*, xxvi, 142.

³⁵U. S., 18 Cong., 1 Sess., *Report of Secy. of Treas.*, 495.

³⁶*Edwards Papers*, 156.

³⁷Letter of Caldwell to Edwards, in *ibid.*, 158.

was deemed advisable. A few weeks later, Edwards made an announcement of his resignation through the newspaper columns, but assured the public that the Bank of Edwardsville was in good condition and under careful management. As proof of the bank's soundness, he stated that the amount of specie on hand was more than twice the amount of outstanding circulation, that none of the directors had borrowed heavily, some of them not at all, and that General Payne, the largest individual stockholder had never asked for accommodation and had always urged that the bank's affairs be conducted with the greatest caution.³⁸

The financial situation, however, was rapidly becoming more serious. As a result of the failure of the Bank of Missouri in September, 1821, a run was made upon the Edwardsville bank by note holders from St. Louis and St. Charles. The directors were warned the night before of their coming and opened the doors of the bank at seven the next morning, keeping them open until several hours after closing time in the evening. This policy was continued for several days in the hope of restoring confidence but the bank was soon compelled to suspend specie payments.³⁹ President Stephenson immediately apprized Secretary Crawford of the action and assured him that the United States funds were amply secured.⁴⁰ Secretary Crawford designated Edward Coles, afterwards governor of Illinois, to adjust the claim of the United States, but no settlement was reached aside from the transfer in trust of a large part of the bank's assets as security for the government deposits.⁴¹

Little is known of the final settlement of the bank's affairs save that the assets dwindled away and the United States never recovered any part of the \$46,800 on deposit

³⁸U. S., H. of R., 18 Cong., 1 Sess., Doc. no. 133, pp. 85, 105, no. 128, p. 8.

³⁹U. S., H. of R., 18 Cong., 1 Sess., Doc. no. 128, p. 9; *Edwardsville Spectator*, August 21, 1821, September 11, 1821.

⁴⁰U. S., H. of R., 18 Cong., 1 Sess., *Report of Secy. of Treas.*, 560.

⁴¹*Ibid.*, 566.

at the time the bank closed.⁴² Senator Edwards stated that the assets which were set aside as security for the deposit were at the time more than ample to reimburse the government, but that Secretary Crawford, out of deference to the Johnsons and General Payne had delayed settlement until the securities in trust had become worthless.⁴³

In 1823 when a committee of the House of Representatives at Washington was investigating the question of public deposits, Edwards was summoned to appear before it. In the course of his examination, he repeated his charge against Crawford, adding that he himself had warned Crawford long before the bank failed. The next year he accepted the post of minister to Mexico and was about to leave for that country when Secretary Crawford sent to the House a stinging reply to the charge. He denied that Edwards had given him any intimation as to the bank's condition. Edwards immediately resigned his appointment and preferred formal charges against Crawford. A committee of the House made a thorough investigation of the whole affair; its conclusion was that "nothing has been proved to impeach the integrity of the Secretary or to bring into doubt the general correctness and ability of his administration of the finances."⁴⁴ They found that the evidence sustained Edwards in his statement that he had published in the newspapers his intention of withdrawing from the bank, but there was no evidence that either he or the receiver of public moneys ever informed Secretary Crawford about the bank's condition. In fact, since Mr. Stephenson, the receiver, was also the president of the bank, the committee thought it but natural that he should fail to warn Mr. Crawford that the bank was not in first rate condition. The committee urged, however, that the practice of appointing the presidents of depository banks to be receivers of public moneys be discontinued.

⁴²*U. S. Reports on Finances*, 1820-36, p. 605.

⁴³*Niles' Register*, xxvi, 140 ff., 274, 290; Edwards, *Life and Times of Edwards*, 135 ff.

⁴⁴U. S., H. of R., 18 Cong., 1 Sess., Doc. nos. 128, 133; *Niles' Register*, xxvi., 174.

A charter almost identical with the one granted to the Bank of Illinois was issued to the president, directors and company of the Bank of Kaskaskia in 1818.⁴⁵ Had the bank been started earlier there is little question but that it would have succeeded. As it was, even the ability and integrity of its officers and its location in the principal settlement and capital of the territory were not able to neutralize the effect of the provision requiring that subscriptions be paid in gold and silver coin. This requirement had been met a little over a year before by the stockholders of the Bank of Illinois, but the territory was now on the eve of hard times so the Bank of Kaskaskia never transacted business. As Justice Shelton puts it in his decision in the case of the *People vs. Lowenthal*: "It issued no paper money and it cannot be said to have defrauded any man."⁴⁶

The incorporators of the City and Bank of Cairo undertook to launch a most pretentious enterprise on the site of the present city of that name. With the idea of founding a great metropolis they had become the owners of eighteen hundred acres of land at the junction of the Ohio and Mississippi rivers.⁴⁷ They were required by the charter to lay off the site into city lots which were to be sold at one hundred and fifty dollars each. Fifty dollars of this amount was to be devoted to building dikes and levees and constructing public buildings, while the remaining one hundred dollars was to be used as capital for a bank.⁴⁸ For this sum two fifty-dollar shares were to be issued, one to belong to the purchaser of the lot and the other to the company. When five hundred lots had been sold, a stockholders' meeting was to be held and thirteen resident citizens chosen as directors.⁴⁹ The bank was to begin the issue of notes as soon as the money for the lots

⁴⁵*Laws of Illinois*, 1817-1818, p. 82.

⁴⁶93 Illinois, 191. This same statement appears in Brown, *History of Illinois*, 428, 429.

⁴⁷*Laws of Illinois*, 1817-18, pp. 72, 73.

⁴⁸*Ibid.*, 75, Section 7.

⁴⁹*Laws of Illinois*, 1817-18, p. 76-7, Section 7.

was turned over to its officers. Since the patronage of the bank would be too small to justify its location in the new city for some time, it was provided that a banking business could be transacted at Kaskaskia until the legislature saw fit to "compel all business to be done in Cairo."⁵⁰ The bank charter proper was modeled after those granted to the banks at Shawneetown and Edwardsville.

The bank, according to Governor Ford, never accepted its charter; hence no subscriptions were received nor any organization perfected.⁵¹ Nineteen years later (1837) during the internal improvement excitement the old charter was adopted by a new company of the same name.⁵² Its history will be taken up in connection with the banking operations of that period. As for the project of founding a city, the whole scheme vanished into thin air and Cairo was settled some years later much as other settlements are established.

But one statement of the condition of the Illinois banks is available, namely, a composite balance sheet issued by the secretary of the treasury in 1819, when both institutions were in their prime. The statement shows that only \$140,910 had ever been paid in by the share holders. The remaining liabilities consisted of an outstanding circulation of \$52,021, government deposits to the amount of \$119,036.92, individual deposits amounting to \$32,568.60 and undivided profits to the extent of \$2,994.49. On the other hand, the loans and discounts amounted to \$206,694.32, almost as much as the capital stock, circulation and private deposits combined. This indicates to how small an extent deposit banking was practiced. The deposit by the government of the proceeds from the sale of public land provided the banks with an unusually large supply of specie (\$74,715.51), large amounts of which had to be conveyed on short notice to the Louisville and New Orleans branches of the United States Bank. The \$59,332.18 due from other banks was probably largely

⁵⁰*Laws of Illinois*, 1817-18, 76, 81, Section 22.

⁵¹Greene and Thompson, *Governors' Letter-Books*, ii, 60.

⁵²*Ibid.*

made up of the notes of these banks deposited by the receivers of public moneys. The remaining assets consisted of \$6,614 invested in securities and \$175 in real estate. The presence of such relatively large amounts of government funds produced a somewhat abnormal condition and prevents one from ascertaining the real character of Illinois banking at this period.⁵³

A review of the conditions which prevailed in Illinois during the existence of the two banks may serve the two fold purpose of accounting more fully for the brevity of their existence and the subsequent unpopularity of all moneyed institutions. The commerce of the community was still practically undeveloped on account of the self-sufficient character of the life and the lack of means of communication with the outside world. A bank, therefore, was looked upon as a mill for grinding out paper money on easy terms for speculators. The public lands were sold at two dollars an acre, eighty dollars to be paid down on each quarter section and the remainder spread over a period of four years.⁵⁴ According to Governor Ford, everyone who could borrow eighty dollars worth of the banks' paper invested it in land with the hope that he could sell it at a handsome profit to a "tenderfoot" before the obligation to the bank fell due.⁵⁵ Consequently when the depression of 1819-20 spread over the West, it left disaster in its wake. The failure of the banks in Ohio, Kentucky and Missouri left the people of Illinois with a quantity of worthless paper on their hands. Nearly everyone was hopelessly in debt and his lands liable to seizure by the federal government.⁵⁶ The Illinois banks in order to protect themselves at first merely resorted to suspension of specie payment but finally were compelled to close their doors. In view of such a situation, therefore, it is surprising that they made so creditable a showing as they did.

⁵³U. S., H. of R., 16 Cong., 1 Sess., Doc. no. 86, facing p. 40.

⁵⁴Laws of the U. S., 6 Cong., 1 Sess., Ch. 55, Sec. 5.

⁵⁵Ford, *History of Illinois*, 43; Wildman, *Money inflation in the United States*, 68.

⁵⁶Ford, *History of Illinois*, 44.

CHAPTER III

BANKING A STATE MONOPOLY.

When Illinois was admitted to the Union in 1818 the following provision was incorporated in her constitution: "There shall be no other banks or money institutions but those already provided by law, except a state bank and its branches which may be established and regulated by the general assembly of the state as they may think proper."¹ The principal influences underlying the insertion of this provision probably were: (1) The state of Indiana had adopted a similar course just two years before;² (2) Experience with the paper of irresponsible private banks had already engendered considerable feeling against a further resort to that means of supplying the people with a circulating medium. The conviction that note issue could be entrusted only to the state prevailed in spite of the disastrous results that have attended similar experiments in the past.³

It will be noted that the constitution permitted the banks chartered by the territorial legislature to continue, but as has been seen they soon went out of existence and left the field clear for the experiment of state banking.

Much of the future banking policy of the state depended upon the interpretation to be given to the term "state bank." When the question arose in 1834, the editor of one of the leading newspapers made an unsuccessful search for the records of the constitutional convention of 1818 in order to ascertain the ideas of the members as to what really constituted a "state bank." He was able, however, to interview several survivors of the convention, all of whom were of the opinion that the constitution was

¹Article viii, Section 21.

²*Constitution of Indiana*, 1816, Article x, Section 1.

³Davidson and Stuvé, *History of Illinois*, 305.

intended to delegate to the general assembly the power to establish an institution under state control but not necessarily owned by the state. They merely desired to stop the chartering of any more banks that would not be responsible to the state for their good conduct.⁴

This was evidently the interpretation put upon the banking clause of the constitution by the first state legislature, for they chartered a state bank half of whose stock was to be sold to private individuals. Notwithstanding the fact that the bank could begin business when it had received fifteen thousand dollars in specie,⁵ this amount was not subscribed and two years later the legislature repealed the charter.⁶ As we have already seen, the year 1819 was a very unpropitious time for attempting to launch any enterprise which required specie payments. However, a brief review of the provisions of the act may be of value in throwing light upon the ideas of our early lawmakers as to the kind of bank that would best meet the conditions that confronted them.

The parent bank was to be established at the seat of government and removed whenever it was removed.⁷ Two million dollars worth of shares was open to individual subscription and a like amount was available for the state whenever the legislature felt justified in making the necessary appropriations. The liabilities of the institution other than capital were never to exceed two million dollars. The senate and house of representatives by joint ballot were to choose six of the twelve directors. No judge or member of the legislature could serve as director.⁸ Ten per cent of the stock was to be paid for in specie or its equivalent.⁹ If the bank refused to redeem its obligations in specie on demand, a penalty of twelve per cent interest was added to the amount of the obligation.¹⁰

⁴*Sangamo Journal*, January 25, 1834.

⁵*Laws of Illinois*, 1819, p. 151 ff., Section 5.

⁶*Ibid.*, 1821, p. 93.

⁷*Ibid.*, 1819, p. 151, ff., Section 1.

⁸*Ibid.*, Section 3.

⁹*Ibid.*, Section 4.

¹⁰*Ibid.*, Section 5.

The legislature evidently soon recognized the hopelessness of expecting the bank to accumulate the required amount of specie so it supplemented the charter during the same session at which it was passed by providing that in paying for bank stock, the state auditor's warrant should be considered as good as specie.¹¹ But even this inducement failed to effect the desired result. In the meantime there set in the general collapse of banks and other business enterprises, described in connection with the discussion of the territorial banks. So utterly hopeless was the condition of the people that a clamor for government aid arose.

Notwithstanding the vigorous message of Governor Bond in which he pointed out the folly of establishing a bank for the sole purpose of relieving individual distress, a bill was introduced in the next legislature for the establishment of a bank based wholly on the credit of the state. One would suppose that the mere suggestion of being able to borrow from the state upon easy terms sufficient currency to tide over the hard times would meet the unqualified approval of a community hopelessly in debt. But the opposition to the scheme was not solely on the part of the group of enlightened and disinterested legislators who contested the measure every step of the way. Mass meetings were held to protest against the adoption of the project.¹² At a meeting of the citizens of Bond County it was resolved that "the legitimate object of banking institutions is to afford a safe and convenient medium for the emission of loans founded on solid capital and not a project of needy individuals for the creation of funds; that whenever the emission of paper by any banking institution does not depend upon the ability to redeem it promptly in specie the community can have no assurance that it will not be extravagant, and no reasonable hope

¹¹*Lates of Illinois*, 1819, p. 299.

¹²*Edwardsville Spectator*, February 13, 1821. The action taken by the citizens of Crawford, Randolph and Gallatin counties was embodied in resolutions and forwarded to the legislature. *House Journal*, 1820-21, p. 227.

that it may ever be redeemed." It was further urged that such an act would be unconstitutional in that it would impair the obligation of contracts.¹³ On the other hand, the passage of the measure was urged on the ground that it is the duty of the state in time of great pecuniary embarrassment to afford such measure of relief to prevent the "unnecessary and wanton sacrifices of the property and possessions of the citizens of the state."¹⁴

The bill, however, passed both houses by a very close vote after its discussion had consumed a fourth of the time of the session.¹⁵ Governor Ford cites the election of its sponsor, Richard M. Young, to the United States senate as one of the many examples in the history of the state of the forgiving nature of the people in the case of men who have been active in the passage of harmful legislation.¹⁶

The constitution of 1818 required that all bills receive the approval of the council of revision which was composed of the governor and the judges of the supreme court. When the act in question came before the council it received a unanimous veto and was sent back to the House for further consideration.¹⁷ The note accompanying the rejected measure gave as the reason for the unfavorable action that the State of Illinois had no right to establish a loan office scheme in the face of the prohibition in the federal constitution against the emission of bills of credit.¹⁸ It had been decided that a bill payable on demand out of a specified fund was not a bill of credit, but the council held that bills of a state payable at some future time were clearly not included in the meaning of that decision and therefore came under the ban of the United States constitution. They further justified their veto with the pre-

¹³*House Journal*, 1820-21, p. 227.

¹⁴Mass meeting of the citizens of Madison County. *Edwardsville Spectator*, March 20, 1821.

¹⁵*Niles' Register*, xx, 48.

¹⁶Ford, *History of Illinois*, 46.

¹⁷*Ibid.*

¹⁸Article I, Section x.

diction that a train of evils would follow the adoption of the bank measure. They urged that some other means be found to relieve the popular distress than the issue of notes which would not circulate in interstate commerce and would not provide a satisfactory medium of exchange even at home.¹⁹

In the house of representatives the bill and objections were referred to a committee which recommended the passage of the bill over the council's veto. Their reply to the objections of the council was: (1) A bank note issued by a state bank was not a bill of credit because the state did not propose to make the notes legal tender; (2) The council signed the bill creating a state bank in 1819; (3) Congress when it admitted Illinois to the Union approved her constitution even though it reserved banking privileges to the state; (4) If other states did refuse to receive Illinois paper the citizens of Illinois would have more for their own use.²⁰ When the motion to repass the bill came before the House, Mr. McLean, the speaker, a bitter opponent of the whole scheme, resigned the chair in order to fight the bill because the rules forbade the speaker to address the House and the friends of the bank measure refused to go into a committee of the whole. He was promptly re-elected, however, and the House went into a committee of the whole in order to give him an opportunity to express his views. Notwithstanding the high regard of the members for Mr. McLean and his eloquent arguments in support of the council's position, the House repassed the bill by a vote of seventeen to ten.²¹ Four of the ten who opposed the measure framed a formal protest against the action of the House and succeeded in having it spread upon the records. The significant feature of

¹⁹*House Journal*, 1820-21, p. 236. *Edwardsville Spectator*, February 13, 1821.

²⁰*House Journal*, 1820-21, p. 261 ff.

²¹Ford's account of this incident (*History of Illinois*, 46) does not tally in every respect with the record of the proceedings of the legislature for February 6, 1821. *House Journal*, 1820-21, pp. 271 ff.; *Edwardsville Spectator*, February 13, 1821.

the document is its declaration that all banks are detrimental to the morals of the people and a menace to popular liberty even when they are established upon a specie basis. They laid the then-existing crisis in the United States at the door of banks and predicted that the State Bank of Illinois would become the tool of the political demagog and the artful politician.²²

On the same day the bill was forwarded to the senate where it received just enough votes to pass it over the council's veto.²³ One of the eight men who gave their votes for the measure immediately received the appointment of cashier of one of the branches of the bank,²⁴ a direct violation of the state constitution.²⁵

The bill in its final form provided for the establishment of the State Bank of Illinois at Vandalia, the new state capital. The capital stock was not to exceed five hundred thousand dollars and was to be owned entirely by the state.²⁶ The bank was to do business for ten years and was permitted to hold property up to double the amount of its capital stock.²⁷ In order that no partiality be shown to any section, branch banks were provided for the towns of Edwardsville, Shawneetown, Palmyra,²⁸ and Brownsville.²⁹ The state was then districted in such a

²²*House Journal*, 1820-21, pp. 227-29.

²³The Illinois constitution of 1818 (Article iii, Section 19) provided that if after consideration the bill was approved in both houses by a majority of all members elected, it became a law without the consent of the council of revision.

²⁴*Alton Spectator*, January 25, 1834.

²⁵Article ii, Section 19.

²⁶*Laws of Illinois*, 1821, pp. 80 ff., Section 1.

²⁷*Ibid.*, Section 2.

²⁸This village, now deserted, was the first county seat of Edwards County when the boundaries of the county extended to Canada. For some years it was a thriving market town, but the location was so unhealthful that it was finally abandoned. McDonough, *History of Edwards, Lawrence and Wabash Counties*, 238.

²⁹At this time Brownsville was the county seat of Jackson County and contained a population of over five hundred, ranking next to Shawneetown and Kaskaskia. However, the collapse of the state bank and several other misfortunes caused the town to be abandoned. Illinois State Historical Society, *Transactions*, 1905, p. 372.

manner that every county was assigned to the principal bank or one of the branches.³⁰

The president and the six directors of the parent bank and five directors for each of the branches were to be chosen biennially by joint ballot of the two houses of the legislature. In choosing the branch directors, however, proper geographical distribution must be made.³¹ The selection of all other officers was left to the respective boards of directors. Although the state was the sole owner and beneficiary of the enterprise, its total appropriation for getting the institution under way was the two thousand dollars provided for the purchase of bank note plates.³² For the time being only three hundred thousand dollars was to be printed and issued, the issue of the remaining two hundred thousand being left to the will of the next legislature.³³

The denominations provided for were ones, twos, threes, fives, tens and twenties. It was required that every note should read: "The President and Directors of the State Bank of Illinois promise to pay to----- or bearer the sum of----- Dollars, agreeably to the provision of the charter of this institution, with interest thereon at the rate of two per cent per annum. Receivable at all times for debts due the State or the Bank."³⁴

As soon as the notes were ready they were distributed to the bank and branches according to the population of their respective districts. The banks were required to deal with all persons alike.³⁵ A borrower must apply only to the bank in his own district and no one person was to receive a loan of more than a thousand dollars. If the amount of the loan exceeded a hundred dollars, payment must be secured by a mortgage on unincumbered

³⁰*Laws of Illinois*, 1821, pp. 80 ff., Section 4.

³¹*Ibid.*, Section 5.

³²*Ibid.*, Section 8.

³³*Ibid.*, Section 9.

³⁴*Ibid.*, All unauthorized issues of paper currency within the state were forbidden under a penalty of \$10,000.

³⁵*Ibid.*, Section 12.

real estate worth at least twice the amount of the mortgage. Loans of a hundred dollars or less could be made upon personal security approved by a two-thirds vote of the directors present at the meeting at which the loan was under consideration.³⁶ A uniform interest rate of six per cent was established for all loans.

The bank was made the sole depository of the state's funds and in so far as these funds consisted of specie or its equivalent the bank could make them the basis of a further note issue up to twice their amount. This issue, however, must be redeemed in gold or silver on demand³⁷ while the state allowed itself ten years to redeem the regular issue, one tenth to be redeemed and retired annually.³⁸ The issue based upon state funds was forbidden by an act of 1823, but the state in other ways continued for ten years to misuse the funds granted to the common schools by the United States.³⁹ The bank was required to show great leniency to its debtors. Their loans must be considered standing accommodations renewable from year to year if necessary, upon payment of ten per cent of the principal.⁴⁰

In order to safeguard the interests of the state the branch banks were required to report semi-annually to the principal bank and these reports were incorporated in the biennial report of the bank to the legislature. Committees of the legislature were to be permitted to examine the bank at any time.⁴¹

The original act provided that the president of the parent bank should receive in lieu of a salary the right to borrow two thousand dollars more than he could otherwise have borrowed.⁴² But at the same session it was provided that he should receive a cash salary of eight

³⁶*Laws of Illinois*, 1821, pp. 80 ff., Section 12.

³⁷*Ibid.*, Section 36.

³⁸*Ibid.*, Sections 23, 29.

³⁹Sumner, *History of Banking in All Nations*, i, 157.

⁴⁰*Laws of Illinois*, 1821, pp. 86 ff., Section 14.

⁴¹*Ibid.*, Section 17.

⁴²*Ibid.*, Section 18.

hundred dollars instead of the extra accommodation at the bank.⁴³ However, branch presidents and directors were granted additional loans of a thousand dollars and seven hundred fifty dollars respectively.⁴⁴ Cashiers were to be paid a salary of not more than eight hundred dollars.⁴⁵

As was the case with the territorial banks the legislature was forbidden by the federal constitution to make the notes legal tender, but it sought to accomplish the same end by the usual indirect methods, namely, making the notes legal tender for all public dues within the state⁴⁶ and providing that the execution of judgments should be suspended for three years if the plaintiff were unwilling to accept the state bank notes.

The legislature proceeded to elect the president and directors of the bank and, in accordance with a supplementary act of 1823, the cashier of the parent bank. The bank began making loans in July, 1821, and everyone who could offer the necessary security obtained his share of the three hundred thousand dollars.⁴⁷ According to Ford, a large number of the bank's officers were members of the legislature⁴⁸ and all of them professional politicians who were then, or expected to be, candidates for office so they were unwilling to risk their popularity by a too close scrutiny of the kind of security offered. Moreover, they were merely the agents of a state lending her credit to her indigent citizens and felt no keen sense of personal responsibility.⁴⁹

⁴³*Laws of Illinois*, 1821, 144.

⁴⁴*Ibid.*, Section 18.

⁴⁵*Ibid.*, Section 19.

⁴⁶*Ibid.*, Section 9.

⁴⁷*Edwardsville Spectator*, July 3, 1821. In the same newspaper in its issue of August 14, 1821, is an account of the meeting of the directors of the Edwardsville Branch at which the entire share of the district, more than \$80,000, was loaned upon personal security in sums of \$100 or less.

⁴⁸The names of the president and directors of the bank are given in the *House Journal* (2 Sess., 1 G. A.) 68. None of the persons mentioned in this list was a member of the general assembly.

⁴⁹Ford, *History of Illinois*, 47. Article on Illinois by W. H. Brown, in *Chicago American*, December 25, 1840.

As far as the larger transactions were concerned, the new bills for a time supplied the demand for a circulating medium, but there was still no provision for small change. Minor coins were as scarce as those of larger denomination; hence the practice arose of tearing the bank notes into halves, quarters, etc., in order to make change.⁵⁰ This practice received the official sanction of the bank in 1823 when its directors authorized the tearing of all notes of five dollars or less denomination and offered to receive portions of notes in payment of all obligations to it.⁵¹

The members of the general assembly believed that the bills of the bank would be on a par with gold and went so far in this belief as to pass resolutions calling upon the treasury department at Washington to accept the Illinois bank notes as the equivalent of specie.⁵² According to Ford's oft-quoted account, when the matter came to a vote in the state senate, Lieutenant-Governor Menard, a shrewd old French pioneer, put the motion as follows: "Gentlemen of de Senate, it is moved and seconded dat de notes of dis bank be made land office money. All in favor of dat motion say 'aye.' All against it say 'no.' It is decided in de affirmative. And now gentlemen, I bet you one hundred dollars he never be made land office money."⁵³

It was not long until the dire prediction of those who had opposed the establishment of the bank began to be fulfilled. The notes which never were accepted on a par with gold soon began to depreciate still further and in a few weeks after the bank opened were quoted at seventy-five cents on the dollar.⁵⁴ A month later they had reached sixty-two and one-half cents⁵⁵ and kept on sinking until 1823 when they remained at about thirty cents until 1825.⁵⁶

⁵⁰*Illinois Intelligencer*, March 15, 1823; Ford, *History of Illinois*, 47.

⁵¹*Illinois Intelligencer*, March 15, 1823.

⁵²Ford, *History of Illinois*, 45.

⁵³*Ibid.*

⁵⁴W. F. Baker, in *Bankers Magazine*, ix, 12.

⁵⁵Advertisements in the *Edwardsville Spectator*, October 16, 1821.

⁵⁶Article by W. H. Brown, in *Chicago American*, December 25, 1840. The editor of *Niles' Register* (xxiv, 342) reports having received a sub-

After that year there was a rise in value due to the adoption by the state of measures which will be considered at a later stage.

Several causes contributed to this utter failure of the notes to maintain their standing in the eastern money market. In the first place, no provision was made for the redemption of the notes in specie on demand. The parent bank received some specie for a time, most of it as the depository of state funds received from the federal government. But aside from this limited amount not a dollar in specie was paid into the treasury.⁵⁷ When upon one occasion one of the branches received two dollars in specie from a customer they were placed upon exhibition as curiosities.⁵⁸ The loss of its building and fixtures in January, 1823,⁵⁹ by fire compelled the parent bank to keep its specie in a box fastened with a padlock. In March of the same year, robbers broke into the temporary quarters of the bank and carried off \$4,200, "a large part of its specie."⁶⁰ From these bits of evidence it can readily be seen that the bank was in no position to maintain its notes at a parity with gold.

In the next place, the bank's debtors failed to take the right attitude towards their obligations. The *Edwardsville Spectator* soon after the first loans were made in that district complained that the greater part of the borrowers instead of paying their honest debts squandered the money for "purposes worse than useless."⁶¹ They looked upon the issue as a gift from the state which could be paid back or not as they saw fit.⁶² Other borrowers of the bank's notes eased their consciences with the assurance that the notes were bills of credit and therefore the whole scheme was

scription from an Illinois gentleman who complained that it cost him twelve dollars in Illinois currency to obtain the five dollars in United States money inclosed.

⁵⁷Edwards, *Life and Times of Edwards*, 207.

⁵⁸Baker, in *Bankers Magazine*, ix, 12; Brown, *History of Illinois*, 433.

⁵⁹*Illinois Intelligencer*, February 1, 1823.

⁶⁰*Ibid.*, March 20, 1823.

⁶¹December 11, 1821.

⁶²Ford, *History of Illinois*, 47.

unconstitutional.⁶³ The question was taken into the courts and a decision was rendered by the supreme court of Illinois in 1826. It was decided that the borrower of a bank's paper cannot be released from his obligation by *raising the contention that the bank's charter is unconstitutional*.⁶⁴ The court ignored the real issue of the constitutionality of the bank's paper until 1833, two years after the expiration of its charter. It was then held that a promissory note given in consideration of such bills is void and cannot be collected by law.⁶⁵ If this latter decision had come some eight or ten years earlier it would probably have placed the state in an even more embarrassing position than the one it was forced to occupy until it had settled the bank's affairs.

In the third place, the series of ultra-liberal measures granting relief to debtors complicated the financial situation in the state. We have already noted the provision in the bank's charter granting a stay of execution where the plaintiff refused to accept bank notes from the debtor. At the same session, the legislature added the provision that even if the plaintiff did signify his willingness to accept state currency, the defendant could have a replevin of sixty days. The execution of all contracts calling for gold and silver was stayed from one to five months according to the amount of the debt. All judgments of justices of the peace could also be stayed for thirty days. These measures, while on their face either of no significance to the bank or else actually showing favor to its notes, still did a great deal to engender a spirit of disregard of the sacredness of one's obligations. The bank undoubtedly lost far more from the prevalence of this spirit than it gained from the favor shown its notes. The great depreciation of the bank's notes ought in itself to have afforded sufficient relief to debtors but the legislature in 1825 granted further aid to that class by making the warrants of the state audi-

⁶³Edwards, *Life and Times of Edwards*, 175.

⁶⁴Snyder vs. President and Directors of the State Bank, *Breese*, 161.

⁶⁵Linn vs. President and Directors of the State Bank, 1 *Scammon* 87.

tor receivable at the bank.⁶⁶ With the appreciation of the bank's notes referred to above, began another series of relief laws which will be dealt with in another connection.

Lastly, when we consider that the bank had twenty-six directors, each of whom was entitled to a loan of seven hundred fifty dollars in addition to his individual borrowings, and four branch presidents, each entitled to additional loans of a thousand dollars, we can readily agree with Governor Edwards' view of the situation. In his inaugural message of 1826, Governor Edwards pointed out to the legislature that the bank's officers had borrowed "to the full limit of the law and thus became more interested than any other class in the community in impairing the credit of the institution and depreciating its notes, as the means of facilitating the discharge of the debts they had contracted with it." They felt that there was no need of paying obligations which could eventually be shifted upon the whole community in the form of state taxes.⁶⁷ By borrowing to the full limit allowed individuals in addition to their accommodation as directors, these men were enabled to divert \$53,500, or more than one sixth of the total issue of notes, to their own selfish ends. In some cases they transferred their right to borrow to their friends, thereby enabling them to exceed the lawful loan limit.⁶⁸

It is little to be wondered at, therefore, that the whole venture was doomed to failure from its very birth and that but two years after its inception, state bank notes were quoted at but thirty cents on the dollar.

The effect of the depreciated notes was now so keenly felt that both friends and foes of the original project united in asking the next legislature, to which had been left the option of issuing an additional two hundred thousand dollars, not to exercise this privilege. The bill which sought to provide such an issue was accordingly defeated

⁶⁶*Laws of Illinois*, 1824-25, p. 84.

⁶⁷Message of Governor Edwards, *Senate Journal*, 1826-27, p. 54.

⁶⁸*Ibid.*

in the lower house by a vote of nine to twenty-four.⁶⁹ The few friends of the measure then attempted to secure the adoption of a resolution providing for the submission of the question to the people at a special election; but this project met a like fate.⁷⁰ A number of measures calculated to remedy the whole situation were introduced, but no action of consequence was taken. In accordance with a joint resolution of the two houses, a committee was appointed to investigate the affairs of the bank and reported: (1) that they had examined the papers and cash of the principal bank and found that they tallied with the annual report of December 11, 1822; (2) that little satisfaction could be had in examining the books of the branches on account of their poor bookkeeping and failure to make reports; (3) that the different branches should be required to obey the law in the matter of transmitting regularly to the parent bank their share of the one-tenth of the notes that was to be destroyed each year. They recommended the creation of a responsible committee whose members would see to it that the retired issue was actually destroyed. They expressed the opinion that such a measure would restore public confidence in the remaining notes.⁷¹ The legislature took little notice of the report of the committee aside from the passage of an act requiring the cashiers of the branches "to make out and transmit to the cashier of the principal bank by the first of January of each year a complete abstract of their discount books for the year past." They reduced the salary of the president of the principal bank to two hundred dollars and increased the salary of the cashier to a thousand dollars.⁷²

When the next legislature met in December, 1824, the necessity for action was so great that it could no longer be ignored. Governor Coles in his message censured the

⁶⁹*Illinois Intelligencer*, January 4, 1823.

⁷⁰*Alton Spectator*, February 11, 1834.

⁷¹*House Journal*, 1822-23, p. 108; *Illinois Intelligencer*, January 11, 1823.

⁷²*Laws of Illinois*, 1822-23, p. 181.

legislature of 1820-21 for its hasty action in interpreting as the pressure of the times a condition which was largely the result of excessive issues of paper. But now that the evil had been done, he recommended the strictest publicity of all the bank's accounts and the passage of such measures as would expedite the speedy dissolution of the bank upon the expiration of its charter without loss to the state.⁷³ Accordingly a law was enacted providing for the appointment of three commissioners to make a thorough examination of the Shawneetown branch bank, whose officers seem to have been under suspicion.⁷⁴

The act further instructed the cashier of this branch to deliver to the cashier of the main bank the whole amount of the ten per cent fund which was supposed to be retired and destroyed every year. A penalty of \$1000.00 was provided if the cashier or other officers hindered the work of the commissioners.⁷⁵ A joint committee appointed to ascertain the condition of the whole institution revealed the fact that thus far the expenses of the principal bank had exceeded its discounts by \$2,403.90. The Brownsville branch had also been run at a loss, but the Edwardsville and Palmyra branches each had a small balance. The Shawneetown branch had been conducted in so loose a manner that it was impossible to ascertain its true condition. The cashier had made a loan of \$3750 without security and was unable to account for \$4800 additional.⁷⁶ The legislature took no immediate action against the Shawneetown officers but three months later by joint resolution it authorized Governor Coles to appoint a competent accountant to make a thorough examination of the books.⁷⁷ This appointment was made and the affairs of the bank carefully investigated, but the books were in

⁷³Governor's message, 1824.

⁷⁴*Laws of Illinois*, 1824-25, p. 16, Section 1.

⁷⁵*Ibid.*, Section 2.

⁷⁶Knox, *History of Banking in the United States*, 716; *House Journal*, 1824-25, p. 203; *Senate Journal*, 1824-25, p. 217.

⁷⁷*Laws of Illinois*, 1824-25, p. 185.

such unintelligible shape as to throw little light upon the bank's real condition.⁷⁸

So involved were the members of the legislature and their friends in the affairs of the bank that no action resulted directly from either investigation.⁷⁹ In the meantime, however, a reform act was passed supplementary to the act establishing the bank. It provided that the cashier of the principal bank should collect all notes as soon as possible and all those not yet signed and proceed to burn them in the public square at Vandalia in the presence of the governor and judges of the supreme court.⁸⁰ Thereafter when the treasurer of the state paid out a bank note it was to bear the stamp "re-issued" and no interest could be collected by the holder.⁸¹ Cashiers of the branches were required to forward semi-annually for retirement and burning all notes repaid by borrowers except a small sum for current expenses.⁸² The offices of president and directors were abolished in the case of all the branches and

⁷⁸The following report of the examiner, taken from the *Illinois Intelligencer* of June 17, 1825, is of interest in showing upon what a costly enterprise the state had ventured:

Liabilities:	
Original note issue.....	\$ 84,685.00
Discounts earned and loans repaid.....	15,547.68
	<hr/>
	\$100,232.68
Assets:	
Unpaid loans	
renewed	\$ 40,321.07
bad debts	31,969.60
Expenses of branches	5,497.90
Notes returned to principal bank	19,947.00
Two per cent interest to note holders.....	903.61
	<hr/>
	\$ 98,638.18

Upon being questioned by the examiner as to the failure of his statement to balance the cashier explained that he would be able to show auditor's warrants and bank notes to cover the deficiency.

⁷⁹Ford, *History of Illinois*, 65; Reynolds, *My Own Times*, 173.

⁸⁰*Laws of Illinois*, 1824-25, p. 82, Section 1.

⁸¹*Ibid.*, Section 2.

⁸²*Ibid.*, Section 3.

only the cashier was left to collect the debts and renew loans. The cashier of the principal bank was placed under a fifty thousand dollar bond and the cashiers of the branches under a thirty thousand dollar bond in order to protect the state from further loss on account of their careless bookkeeping or embezzlement of funds.⁸³ Thereafter a cashier could be removed by the governor at pleasure and satisfactory evidence had to be given before May 1, 1825, that all five of the cashiers were not defaulters and that they had faithfully discharged the duties of their respective offices.⁸⁴ To facilitate the destruction of notes, auditor's warrants were made legal tender at the bank which exchanged them for notes held by the state treasurer.⁸⁵ Five days after the act was signed the bank's officers in the presence of the governor and the supreme court destroyed \$75,000 worth of notes, one fourth of the entire issue.⁸⁶

Governor Coles was keenly alive to the necessity of improving the bank's condition and his letter book bears testimony to his vigilance in enforcing the bank laws.⁸⁷ In a letter to the cashier at the Shawneetown branch he states that the well being of the bank demands a most rigid enforcement of the letter of the law. He warns the official in question that if any further violation of the law occurs, "a very few days will be permitted to pass" before he will exercise the authority vested in the governor by dismissing the offender from office. In the examination of the Shawneetown branch referred to above, the accountant found that the cashier credited himself with a generous fee whenever he protested a note. Governor Coles demanded that reparation be made to the principal bank and that all the bank notes that had accumulated during the six months period be forwarded promptly to the principal bank for retirement.⁸⁸

⁸³*Laws of Illinois*, 1824-25, p. 82, Section 4.

⁸⁴*Ibid.*, Section 1.

⁸⁵*Ibid.*, Section 7.

⁸⁶*Illinois Intelligencer*, January 21, 1825.

⁸⁷Greene and Alvord, *Governors' Letter Books*, i, 76-82, 89.

⁸⁸*Ibid.*, 89.

On June twenty-third after the branches had sent in their notes, a second "purification by fire"⁸⁹ of the notes of the bank occurred in which eleven thousand dollars worth was destroyed. Within two weeks the specie value of the outstanding notes increased about five cents on the dollar.⁹⁰ By December twentieth when the next semi-annual destruction of notes occurred the total amount outstanding had been reduced to less than two hundred thousand dollars.⁹¹ From this time the appreciation of the notes continued with the progress of their retirement.⁹² At the close of Governor Coles' administration a year later, they were rated at seventy-five cents on the dollar.

Governor Coles continued his unrelenting vigilance over the bank up to the very close of his administration. Just before the opening of the next general assembly in December 1826, he sent a lengthy questionnaire to the cashiers of the bank and branches with a view to obtaining data for the use of the legislators,⁹³ but the result was a great disappointment. The cashier of the principal bank answered the questions in a very unsatisfactory manner. The Shawneetown cashier had recently died and his administrator had refused to turn over the property of the branch to the new appointee. The other branches furnished sufficient information in addition to that received from the principal bank to give a general idea of the condition of affairs. The four districts in question had loaned \$215,000. Of this amount, \$109,615 had been repaid, while the remainder might be repaid within the allotted five years or might have to be abandoned as uncollectible. The expenditures for operation had consumed \$43,820, an excess of \$11,000 over interest earned.⁹⁴

In his farewell message, Governor Coles gave some very sound advice which the legislature would have done

⁸⁹*Niles' Register*, xxix, 326.

⁹⁰*Illinois Intelligencer*, June 24, 1825.

⁹¹*Niles' Register*, xxix, 326, 369.

⁹²*Chicago American*, December 25, 1840.

⁹³Greene and Alvord, *Governors' Letter Books*, i, 107.

⁹⁴*Senate Journal*, 1 Sess., 1826-27, p. 22.

well to heed, but which, as we shall see, was soon forgotten. He urged them not to increase the already great embarrassment of the state's finances by the enactment of measures for the further relief of the already pampered debtor. He advocated a policy of non-interference with the bank, aside from providing for a simple effective system for the settlement of its affairs. Finally, he pointed out the fact that a speedy termination of the whole enterprise was the only protection against a total loss to the state from the deterioration of the bank's assets.⁹⁵

From the very beginning the state bank proved to be a serious burden to the state's finances. The state's annual revenue amounted to about \$25,000 and was derived almost wholly from the land held by non-residents in the region still known as the military tract, lying north and west of the Illinois River. The residents of the state paid their taxes to the counties every year, while the state collected from the non-residents only every other year.⁹⁶ As early as 1822 the state auditor had pointed out that some measure should be adopted for the relief of public officers who were receiving their salaries in bank paper at par and paying for goods at a discount of more than fifty per cent. He contended that the non-resident taxpayer met but half of his real obligation to the state by paying in bank notes and furthermore he escaped all the attendant currency ills which a resident was compelled to suffer.⁹⁷ Thus it can be seen that the depreciation of state paper, while it decreased the real revenue on one hand, caused an increasing clamor for a greater expenditure on the other. As this was a matter that concerned the members of the general assembly in a personal way, prompt action was taken upon the auditor's suggestion. Six weeks later, an act had been passed and approved appropriating nine dollars a day each to the speakers of the two houses in place of the usual *per diem* of five dollars.⁹⁸ Each senator

⁹⁵*Senate Journal*, 1 Sess., 1826-27, p. 22.

⁹⁶Ford, *History of Illinois*, 47. This was regarded as a great injustice to the residents of the state.

⁹⁷*Laws of Illinois*, 1822-23, p. 227.

⁹⁸*Ibid.*, 164, Section 2.

and representative was required to write on a slip of paper the sum he was willing to accept provided it did not exceed seven dollars per day. The previous compensation had been three dollars and a half. As for other state officers, the auditor was instructed to allow them fifty per cent more than the constitution specified.⁹⁹

Since the available fund of bank notes in the treasury was not sufficient to meet more than half of the state's current obligations the auditor was authorized to issue his warrant bearing six per cent interest for the rest.¹⁰⁰ The notes and warrants circulated side by side, both depreciating until in 1825 the legislature was compelled to make further provision for public officers. Accordingly the appropriation bill of 1825 provided that a committee consisting of the treasurer, the secretary of state and the cashier of the principal bank should determine at the beginning of each month the rate at which the treasurer should pay out warrants and notes during the ensuing month. For the time being the auditor was instructed to rate the notes of the bank at three dollars for one in specie.¹⁰¹ In other words, the state was borrowing money at the rate of two hundred per cent interest. The result was that the ordinary expenses of about \$30,000 were increased threefold without any increase in income.¹⁰² The gap that was made by the destruction of bank notes was soon more than filled by warrants. In a way it would have been better to have retained the notes, for they circulated more freely and their expense to the state was less. Furthermore, the issue of \$107,000 in warrants in a single year served to keep down the value of the notes. The warrants as well as the bank notes were eagerly seized upon by non-residents and speculators for the purpose of paying their state taxes.¹⁰³ Notwithstanding this handi-

⁹⁹*Laws of Illinois*, 1822-23, 166, Section 6.

¹⁰⁰*Ibid.*, Section 7.

¹⁰¹*Laws of Illinois*, 1824-25, p. 182.

¹⁰²Ford, *History of Illinois*, 48; Edwards, *Life and Times of Edwards*,

203.

¹⁰³*Ibid.*, 213-15.

cap, however, the attendant increase in the value of the bank's paper following the retirement of the \$100,000 indicated that the destruction of the notes had engendered a feeling of confidence in the state's integrity. The legislature demonstrated its optimism by the passage of an act which provided that the rate at which state paper should be paid out after February 17, 1827, was to be determined by the same committee that had been performing this service, but that they should hold only quarterly meetings. They were instructed to continue this duty until March, 1830. At each meeting they were to decrease the treasury discount on the notes by at least two and one-half per cent. At this rate, by March, 1830, the notes would be paid out of the treasury on a par with gold.¹⁰⁴

The Illinois courts had been given to an arbitrary scaling down of the debts of individuals against whom the bank had obtained judgment. This practice was ordered discontinued. Thereafter, in cases where judgment was rendered, the defendant could elect to pay specie or bank notes. If he chose the former his debt was reduced to the actual specie value of state bank notes; otherwise he must pay the whole amount of the face of the judgment. The same option was granted to persons who purchased property sold by the bank to satisfy a judgment.¹⁰⁵

The resignation of Senator Edwards to accept the position of minister to Mexico had left a vacancy for the next legislature to fill, but before it assembled Edwards had resigned his post and engaged in the controversy described in connection with the Bank of Edwardsville. Upon the convening of the general assembly he announced his candidacy for his former seat in the United States senate. But his hostility to banks had aroused the opposition of a number of influential men in addition to his old political enemies and he was defeated. Shortly afterwards he announced his candidacy for governor on an anti-bank platform. With a comparatively unknown

¹⁰⁴*Laws of Illinois*, 1826-27, p. 82.

¹⁰⁵*Revised Code*, 1820, p. 164.

opponent and a long record of public service Edwards had the advantage from the start. He traversed the state from end to end, attacking the bank and everyone connected with it. He accused its officers of mismanaging its affairs and of employing methods of business that were a menace to the public welfare. The record of the legislature in the field of bank legislation was subjected to a storm of criticism and baleful consequences of the whole undertaking were pictured to his audiences of backwoodsmen. Edwards was elected by a plurality of five hundred votes, but the legislature continued to be dominated by his enemies.¹⁰⁶

In his inaugural address¹⁰⁷ to the legislature Governor Edwards gave a lengthy review of the history of the state bank and the effect of its paper upon the community. But he considered the note issue itself of minor importance as a cause of the deplorable conditions that prevailed. It was his belief that the constant interference by the legislature between debtor and creditor, as well as the lavish increases in salary voted in the face of an empty treasury were responsible for most of the difficulty. He admitted, however, that the existing state of affairs was not entirely due to unwise legislation, and recognized the natural scarcity of sound currency in pioneer communities and the heavy purchase of public land as contributory causes. On the whole, the address gives an adequate and fairly accurate picture of the conditions that confronted the new administration. But Edwards was not content to stop at this point. He proceeded to berate the officers of the bank for "gross fraud and imposition, aggravated by the clearest moral perjury." He considered past investigations as generous applications of white wash and urged the legislature to exercise its right of impeachment and trial of the delinquent officers.

The more or less general charges contained in the governor's message were followed by specific indictments contained in several special messages. The purport of

¹⁰⁶Ford, *History of Illinois*, 64; Edwards, *Life and Times of Edwards*, 209-12.

¹⁰⁷*Senate Journal*, 1826-27, pp. 46 ff.

these messages was that the late president, directors and cashier of the branch bank at Edwardsville had been guilty of a violation of the state bank act of 1821. William Kinney, a prominent political opponent of Edwards, was accused of mismanaging the affairs of this branch while on the board of directors. The principal charge against him was that he was involved in the loan of \$2000 made upon a piece of real estate which upon execution was valued at \$737 and disposed of for \$500. It will be remembered that the law of 1821 provided that no loan on real estate should be made unless the property was worth double the amount of the loan. The loan, according to Edwards, was made for the purpose of buying a printing press with which to conduct the fight for the adoption of a pro-slavery amendment to the state constitution.¹⁰⁸

Other charges were brought by Edwards against Judge Smith, the cashier of the branch. Smith was accused by the governor of having violated every provision of the bank's charter dealing with the lending of the notes, and of showing the grossest partiality and carelessness in handling the payment of loans. Judge Smith was a politician of considerable ability and succeeded in uniting the opponents of Edwards so effectively that the committee appointed to investigate the charges were favorable to the accused officials from the start. The evidence shows that the branch had been run in a very reckless manner, to say the least. Its officers had so many political alliances that they were forced to show partiality in their handling of the bank's business. After the committee had made a lengthy examination of witnesses and papers and reported favorably to the accused, the House resolved that no evidence had been presented against the accused officials which would "justify the belief that they acted corruptly and with bad faith in the management of said bank."¹⁰⁹

During the same session the governor attacked the cashier of the principal bank in a message which contained nine specific instances of violation of the state law. In

¹⁰⁸*House Journal*, 1826-27, pp. 409-11, 418, 459-61, 504 ff.

¹⁰⁹*Ibid.*, p. 595.

this message, he made the further charge against Judge Smith that he still had in his possession unlawfully a large part of the bank's cash. These charges were likewise referred to a committee which took action similar to that in the Edwardsville case.¹¹⁰ In the meantime, a joint committee appointed to examine the state bank, count its money and find out if the "retirement clause" was being fulfilled reported that the affairs of the bank were being "properly and correctly managed."¹¹¹

Edwards afterwards retracted some of the statements he had made about prominent bank officials, but continued his hostility to banks during the rest of his term.¹¹²

His letter book during this period is largely filled with demands for information as to illegal acts done accompanied by threats of removal from office. These letters were regarded as the attacks of a personal enemy rather than the official acts of a chief executive.¹¹³ Edwards was especially anxious to obtain any information that could be used against his enemies in the legislature and in one letter requests the auditor to prepare for him a list of the members of the general assembly who have failed to meet their debts to the bank together with the respective amounts.¹¹⁴

Notwithstanding the hostility of the legislature to the Edwards policies and the relationship that existed between its members and the bank, some progress was made toward protecting the state's interests in the settlement of the bank's affairs. The salaries of the cashiers of the principal bank and branches were reduced to five hundred and four hundred state paper dollars respectively. Thereafter the questionable practice on the part of bank officers of appropriating large sums for current expenses was forbidden. For all such expenditures a specific appropriation from the legislature was now required.¹¹⁵ The president of the

¹¹⁰*House Journal*, 1826-27, 415, 416.

¹¹¹*Senate Journal*, 1826-7, 242-3.

¹¹²Knox, *History of Banking*, 718.

¹¹³Greene and Alvord, *Governors' Letter Books*, i, 116-24, 133.

¹¹⁴*Ibid.*, 120.

¹¹⁵*Laws of Illinois*, 1826-27, p. 377, Sections 1, 2.

state bank was no longer to receive compensation for his services.¹¹⁶ The cashier was ordered to place all outstanding promissory notes of less than one hundred dollars in the hands of a justice of the peace.¹¹⁷ The small amount of individual deposits was to be returned to the depositors and thereafter none but state and school funds were to be received. In order to protect the state's interest the cashier of the principal bank was empowered to bid in property sold by the bank for judgment if the other bids were too low.¹¹⁸

On the other hand the appreciation of the state paper to sixty or seventy cents led to a demand for further relief to bank debtors. In spite of the fact that unreasonable leniency had already been shown to this class and that any further indulgence would delay the final settlement of the bank's business and thus place a greater burden upon the already embarrassed state treasury, a law for the relief of debtors was passed. It provided that any debtor to the bank who was in default of payment, even if judgment had already been rendered, should be forgiven for his past delinquency and allowed to renew his note or mortgage. However, he must agree to pay the back instalments and interest and any court costs that may have been incurred.¹¹⁹ All courts were forbidden to issue executions against bank debtors for three months after the passage of the act.¹²⁰ In case the proceedings against a bank debtor had gone so far that the sheriff was about to seize the property of the debtor upon an execution, the debtor could by arranging with the bank for the renewal of the obligation, compel the sheriff to return the writ, marked: "Satisfied by the renewal of the debt to the bank by the defendant."¹²¹ It was natural that such a trifling policy on the part of the state should lead to an attitude of con-

¹¹⁶*Laws of Illinois*, 1826-27, p. 377, Section 3.

¹¹⁷*Ibid.*, Section 4.

¹¹⁸*Ibid.*, Section 5.

¹¹⁹*Ibid.*, Section 1.

¹²⁰*Laws of Illinois*, 1826-27, p. 376, Section 2.

¹²¹*Ibid.*, Section 3.

tempt on the part of the debtor. Accordingly, in spite of a most earnest protest on the part of Governor Edwards,¹²² additional inducements were demanded and granted on the ground that former measures had not been effective. This time provision was made for the remission of all interest if a debtor would sign, by September 1, 1829, three new notes by which he agreed to pay his obligation to the bank in three annual instalments, on the first of May, 1830; 1831, and 1832, respectively. If instead of signing the notes he chose to settle in full by September 1, 1829, he was to receive a discount of ten per cent and was absolved from all interest. If he paid by July 1, 1830, his interest was deducted but no further rebate was given.¹²³ The act also provided that as a step toward the final settlement of the bank's business the office of cashier of the principal bank be abolished and the state treasurer made ex officio cashier. The work of collection was turned over to the attorney general and the various states attorneys who received two and a half per cent on all collections made.¹²⁴

When the first of September arrived and it was seen that the bank debtors were not taking advantage of the indulgence granted them, Governor Edwards issued a proclamation announcing his intention to show no further mercy in his prosecution of the state's claims.¹²⁵

The same year (1829) Governor Edwards became involved in another controversy with the treasury department at Washington. The state was entitled to draw as a school fund from the federal treasury three per cent of the proceeds from the sale of public land in Illinois. The secretary of the treasury became convinced that this money was not being put to its intended use and ordered the annual payment for 1829 to be withheld. Governor Edwards was a strong believer in state's rights and resented any interference on the part of a federal officer. Consequently

¹²²Governor's message, 1828.

¹²³*Laws of Illinois*, 1828-29, pp. 167-69.

¹²⁴*Ibid.*

¹²⁵Greene and Alvord, *Governors' Letter Books*, i, 148, 149.

he demanded the immediate payment of the money; but it was withheld until the secretary's protest was heeded. The whole difficulty arose over the validity of the practice of the school fund commissioners in investing the funds in state bank notes. These notes were then exchanged at the auditor's office for certificates of indebtedness and the state thereby came into possession of more currency with which to meet its heavy obligations. Edwards justified this diversion of the school money from its proper channels with the assertion that as soon as the state could arrange its disordered finances it would deal liberally with its common schools.¹²⁶

The year 1830 witnessed another struggle for the governorship, with the bank as the leading issue. Lieutenant-Governor Kinney, who it will be remembered had been under suspicion during the investigation of the Edwardsville branch, was a candidate against John Reynolds, formerly a judge of the supreme court of Illinois. It was but natural that the whole Edwardsville scandal should be unearthed and freely aired during the campaign. Kinney took the position that he should be rewarded for the years of labor and sacrifice spent in trying "to bolster up the state bank." He stated that over twenty thousand dollars in specie was due him at the time the bank opened. He accepted bank notes at par as a matter of patriotic duty to the state and subsequently paid most of them out at thirty to thirty-five cents on the dollar. He cited the favorable showing of the Edwardsville branch as well as his exoneration by the legislature as the best evidence of his ability and honesty in an office of trust.¹²⁷

The opponents of the bank had an able candidate in Judge Reynolds. In his speeches during the campaign he insisted that he had always opposed the bank, that he voted against its establishment, and that the people would have to bear a heavy burden of taxation on account of the sins of bank officials, like his opponent. The friends of

¹²⁶Edwards, *Life and Times of Edwards*, 548, 549; *Illinois Intelligencer*, February 5, 1831.

¹²⁷*Illinois Intelligencer*, April 10, 1830.

the bank, on the other hand, pointed out that Judge Reynolds was a borrower from the bank and as a member of the legislature could always be counted upon to support the various relief measures with which his party appealed to the bank debtors for support at the polls. In spite of these accusations, however, Judge Reynolds was elected.

Upon the legislature which met in December, 1830, there devolved the difficult task of providing for the liquidation of the state bank, whose charter was to expire during the next year. The legislature of 1821 had pledged all of the state's resources present and future to the redemption of the bank's notes, with the expectation that the profits of the business would be more than ample to provide for a final settlement of all liabilities. But the nearer the day of reckoning approached, the less able was the state to meet its obligations. The bank's resources had been allowed to dwindle away; while the condition of the state's finances was daily becoming more precarious.

In his report of January 1, 1831, the state treasurer stated that the amount still due the bank was \$98,639.52. Of the three hundred thousand dollars issued in 1821, \$147,742 had been redeemed (mostly by a balancing of debits against credits) and destroyed. There remained, therefore, \$152,258 which the state must be prepared to redeem before July 1. To meet this obligation there was to the bank's credit \$14,899.96 in cash, while the state had to its credit about \$20,000 more. The buildings of the bank and branches were estimated to be worth \$5,800.42. The accrual of the state's ordinary revenue and the collection of some of the bank's debts would help swell the total available resources.¹²⁸ At the same time, however, a large amount of auditor's warrants was outstanding and the ordinary expenses of the state government had to be met.

In his inaugural message¹²⁹ Governor Reynolds advocated the winding up of the bank's business as rapidly as consideration for the welfare of the state and the debtors would permit. He urged the legislature to uphold the

¹²⁸*Senate Journal*, 1830-31, pp. 181-83.

¹²⁹*House Journal*, 1830-31, p. 63.

credit and character of the state by providing for the prompt payment of its obligations. It required courage and a high sense of public duty to disregard the widespread sentiment in favor of repudiation.¹³⁰ Nevertheless a bill was passed by both houses authorizing the governor to borrow a hundred thousand dollars at six per cent for the purpose of aiding in the redemption of bank paper and auditor's warrants, and replacing the money wrongfully taken from the school funds. The loan was to be payable after 1850 in specie or notes of the United States Bank.¹³¹ Governor Reynolds promptly entered into a contract with Samuel Wiggins of Cincinnati for the loan of the entire amount but the state treasurer was not permitted to draw upon Mr. Wiggins for more than thirty thousand dollars before October 1. Governor Reynolds very wisely based his calls for the various payments upon accurate data as to the immediate needs of the treasury and in this way reduced the interest payments to the smallest possible amount.¹³² The following account taken from Governor Ford's *History of Illinois* gives a vivid picture of the effect of the loan upon the people:

"The money was obtained, and the notes of the bank redeemed, the honor of the state was saved but the legislature was damned for all time to come. The members who voted for the law were struck with consternation and fear at the first sign of public indignation. Instead of boldly defending their act and denouncing the unprincipled demagogues who were inflaming the minds of the people these members when they returned to their constituents went meanly sneaking about like guilty things making the most humble excuses and apologies. A bolder course of enlightening the public mind might have preserved the standing of the legislature and wrought a wholesome revolution in public opinion then much needed. But as it was the destruction of great men was noticeable for a number of years. The Wiggins loan was long a bye word

¹³⁰Ford, *History of Illinois*, 106.

¹³¹*Laws of Illinois*, 130-31.

¹³²Greene and Alvord, *Governors' Letter Books*, i, 162.

in the mouths of the people. Many affected to believe that Wiggins had purchased the whole state, that the inhabitants for generations to come had been made over to him like cattle; and but few found favor in their sight who had anything to do with the loan."¹³³

Several other laws relating to the bank were passed at the same session. One of them created a commission for the purpose of counting and destroying bank notes. It was to meet every three months to burn all the notes redeemed during that time, until all the original issue had been destroyed. The membership of the commission consisted of the governor, the secretary of state and the state treasurer.¹³⁴

An act for the further relief of bank debtors provided that all who had not availed themselves of the relief act of 1829 should be permitted to substitute for their regular interest bearing obligation a non-interest bearing note payable on or before May 1, 1832. If this note was paid before December 1, 1831, a six per cent rebate was to be deducted from the principal. In order to dispense with the regular machinery of the bank as soon as possible, it was provided that after July, 1832, the work of collecting notes and mortgages due the branches should be assigned to the attorney general and the states attorneys. All bank property was to be turned over to the state treasurer as had been done in the case of the principal bank. Each branch cashier was allowed two hundred and fifty dollars for his services in closing up his work, his office to expire on the first Monday in December 1832. After that date all bank property was to be sold by the attorney general and the states attorneys.¹³⁵

Even with the instalments of the Wiggins loan becoming available at frequent intervals there was danger of a shortage of specie for the redemption of notes. Accordingly it was provided that whenever a note was presented at the treasury and the money for its redemption

¹³³Ford, *History of Illinois*, 107.

¹³⁴*Laws of Illinois*, 1830-31, p. 190.

¹³⁵*Ibid.*, p. 182.

was not available, a state bond bearing six per cent interest should be issued, redeemable at the state's pleasure, provided the holder received two months' notice. These bonds were receivable for all dues to the state. The treasurer was instructed to devote all specie not needed for current expenses to the redemption of bank notes.¹³⁶

In the meantime the president and directors of the principal bank as well as the various state officers were experiencing considerable difficulty in inducing James M. Duncan, the late cashier of the bank, to surrender the property of the bank to the state treasurer. The act of January, 1829, required that he make the transfer by March 1 of that year, but he left Vandalia on account of ill health and failed to comply with the law. On November 29 of that year the board of directors, having learned of his delinquency, demanded that he surrender the bank's property at once. He promised to do so immediately but did not keep his word. In April, 1830, the circuit attorney at the request of the board entered suit against Duncan and his bondsmen for one hundred thousand dollars damages.¹³⁷ In an interview with the editor of the *Illinois Intelligencer*, Duncan stated that he considered the law abolishing his office as defective in not providing for a thorough checking up of the transfer and therefore was not willing to assume the responsibility.¹³⁸ The members of the legislature determined upon getting possession of the money and accounts of the bank without waiting for the slow process of court procedure, sent a joint committee to Duncan's house and instructed them to bring the property in question back with them. Duncan was not at home and his wife declined to give it up on the grounds that suits were in progress against her husband and he needed the vouchers in the preparation of his case.¹³⁹ Two weeks later Duncan notified a committee of the senate that he would leave the books of the bank

¹³⁶*Laws of Illinois*, 1830-31, 181.

¹³⁷*Senate Journal*, 1830-31, pp. 172 ff.

¹³⁸*Illinois Intelligencer*, July 17, 1830.

¹³⁹*Senate Journal*, 1830-31, p. 189.

where they could get them but would not deliver them in person.¹⁴⁰ Later at a meeting held by the committee Duncan was present and a compromise was reached by which the legislature was to pass a law providing for three referees to examine the books and agree upon a settlement. Accordingly the act of February 1 was passed providing for this method of settling the controversy. It was specified that the final settlement must be ratified by the general assembly and that Duncan was to be allowed no salary for services since March 1, 1829. However, Duncan was compelled to agree in writing that he would abide by the decision of the referees and transfer all the bank's property to the state treasurer.¹⁴¹ Before a settlement was reached the legislature by a joint resolution demanded that Duncan turn over the money of the bank at once, but he refused on the ground that referees had been provided to settle his accounts and that he would await their decision.¹⁴² When the legislature met in December, 1832, the treasurer reported that the books of the principal bank were still in the hands of the three auditors. The cashiers of the branches had been allowed from July 4 to the first Monday in December to post their books and hand them over to the treasurer, but only two had done so.¹⁴³ Such incidents as these, while unimportant in themselves, are valuable for the light they throw upon the petty and trifling methods that characterized the management of the state bank.

With the help of the Wiggins loan the work of redeeming the outstanding notes was carried on so expeditiously that by January 5, 1832, \$289,000 of the issue of three hundred thousand had been redeemed and destroyed.¹⁴⁴ Three years later the treasurer reported that \$6554.50 worth of the notes had not yet been presented. Considering the comparatively large per cent of notes

¹⁴⁰*Senate Journal*, 1830-31, p. 273.

¹⁴¹*Laws of Illinois*, 1830-31, pp. 178-179.

¹⁴²*Senate Journal*, 1830-31, p. 359.

¹⁴³*Ibid.*, 1832-33, pp. 72, 73.

¹⁴⁴*Ibid.*, 1832-33, p. 240.

that were liable to be destroyed or mislaid, this is not a surprising proportion of the whole issue.¹⁴⁵

The legislature, either for political reasons or on account of the bank's debt, passed another relief law for debtors to the bank. It was provided that in case any debtor settled his account with the bank before January 1, 1834, all of the interest and ten per cent of the principal should be deducted provided the total rebate did not exceed twenty-five per cent. The law further provided that if in the judgment of the court the settlement of a decedent's obligations with the bank would distress a widow and orphans the court could declare the debt cancelled.¹⁴⁶ As a climax to the long series of acts granting relief to debtors the supreme court, the following December (1833), in the case of *Linn vs. State Bank* to which reference has already been made, decided that the act authorizing the bank was unconstitutional.

The effect of this release of debtors from all obligation to the bank was to increase the already great burden of the state by the amount that ultimately would have been collected from these persons.¹⁴⁷ Notwithstanding the effect of the above decision, the legislature (1834-35) passed the benefit act of February 14, 1835 in the evident hope of half coercing, half coaxing the debtors to settle and ease their consciences. The act provided that all persons still indebted to the bank should be allowed to pay their debts in three annual instalments, and that all past interest and twenty-five per cent of the original principal should be remitted at the time of granting the new accommodation. However, if a person took advantage of this offer, all right to the use of a plea of unconstitutionality was to be forfeited.¹⁴⁸

In the preparation of his annual report¹⁴⁹ for 1834 the treasurer of the state made a thorough examination of the books and papers of the bank and branches with a

¹⁴⁵*Ibid.*, 1834-35, p. 295.

¹⁴⁶*Laws of Illinois*, 1832-33, p. 584.

¹⁴⁷*Alton Spectator*, December 21, 1833.

¹⁴⁸*Laws of Illinois*, 1834-35, p. 67.

¹⁴⁹The report of the treasurer upon which the contents of this paragraph are based is found in *Senate Journal*, 1834-35, p. 295.

view to furnishing the legislature with a complete resumé of their affairs; but in every case careless bookkeeping prevented his obtaining reliable data. The branch of Shawneetown had been operated during the entire six year term of its first cashier without any account being kept against debtors, or any other reliable record of its operations made. The second cashier had tried to supply this deficiency but found the task a hopeless one. The cashier at Brownsville had but recently been appointed to the position and was unable to be of assistance to the treasurer. The officers of the principal bank upon relinquishing their duties in December, 1832, had rendered an account to the state but the treasurer found it to be incomplete and unreliable. However an analysis of its various items is of some value in so far as it reveals the character of the whole undertaking and its great cost to the state. The statement rendered by the bank is as follows:

Debit	
To capital	\$299,910.38
To balance	18,550.39
To amount of discounts received.....	59,059.21
	<hr/>
	\$377,520.48
Credit	
Amount of notes received from principal bank.....	\$183,424.99
Expenses of bank and branches	57,302.26
Notes, etc., due the bank.....	79,510.34
Allowed for two per cent interest.....	5,403.23
Discounts under act of 1829	1,380.04
Allowed for prompt payment.....	2,140.00
Due by late cashier	27,439.21
Real estate unsold and suspended interest.....	5,129.26
Loss on sale of real estate.....	4,689.50
Appropriations paid at Shawneetown.....	832.50
Profit and loss, Brownsville	3,764.96
Banking house (cost)	6,305.62
Cash received previous to December 3, 1832.....	138.57
	<hr/>
	\$377,520.48

The first item charged to the bank, "capital," represents the total issue of notes. These had been turned over

by the state to the bank and branches and they had loaned them out at six per cent interest which amounted to \$59,059.21, the third item in the liability column. The remaining item, "balance," seems to have been merely a book-keeping device to make the two columns balance. On the asset side of the statement the bank is credited with having returned to the state \$183,424.99 of the total note issue but the books of the state treasurer showed that only \$162,326.63 had been repaid by the bank. At the time the enterprise was projected it was expected that its earnings would exceed the total cost to the state and so far as the current expense account of the bank is concerned, the statement shows it to have been almost \$2,000 less than the total earnings; but Mr. Dement, the state treasurer, pointed out that a large part of the discounts earned was uncollectible and that the \$5,403.23 allowed in interest to note holders, \$1,380.04 and \$2,140.00 granted as rebates for prompt payment of loans, should be added to the current expense account. The bank had already lost \$3,764.96 from bad debts and bad management at Brownsville and \$4,689.50 on real estate bid in at judgment sales under its own mortgages and later sold at a sacrifice. The banking house at Vandalia is listed at its original cost but Mr. Dement estimated that this item as well as "real estate unsold" and "notes, etc., due" would suffer a great shrinkage. In January, 1835, in fact, the book assets of the bank were listed at \$109,127 but on account of the death or insolvency of a number of debtors as well as the decision that the bank act was unconstitutional the treasurer estimated that their real value was between seven and eight thousand dollars. An examination of the treasurer's reports for a number of years after this date shows that the estimate was not far wrong.¹⁵⁰ At the time the above statement was made (December, 1832), \$27,439.21 in money and other valuables was still in the hands of the late cashier, Mr. Duncan,

¹⁵⁰Received from bank's assets November 30, 1834, to November 30, 1835, \$2,502.18; from November 30, 1835, to November 30, 1836, \$1,053.94; from July 1, 1837, to November 30, 1838, \$169.00; from November 30, 1838, to November 30, 1839, \$385.54.

pending an examination of his accounts, but as has been noted in another connection this amount was soon paid into the state treasury.

From data obtained from numbers of the *Illinois Advocate*, Vandalia, and from the report of the treasurer, the writer has compiled a table showing the general condition of each of the four branches at the expiration of the bank's charter.¹⁵¹

There is no accurate record of the total loss entailed by the state from the operations of the bank. Such a record would include the loss of revenue from depreciated currency, increased appropriations necessary in order to meet the state's obligations with paper money, the loss from loans which were never repaid and the interest on indebtedness incurred because of the lack of dependable funds in the treasury. The last named item would include the interest paid on auditor's warrants, fund bonds, and on the Wiggins loan.

Ford estimates that the state lost more than \$150,000 by accepting bank notes at the treasury and that its expenditures were increased \$150,000 more by meeting its obligations with this paper. He also estimates the amount of loans never repaid at \$100,000.¹⁵² The *Alton Spectator* in 1834 estimated that because of the bank the state debt up to that time had been increased by \$460,000.¹⁵³ As

¹⁵¹*Illinois Advocate*, October 14, 28, November 11, 1831, January 20, 1832; Treasurer's Report in *Senate Journal*, 1834-35, p. 295. The starred items are taken from the treasurer's report.

	Edwards- ville	Browns- ville	Pal- myra	Shawnee- town
Bank notes originally received..	\$83,516.00	\$48,834.00	\$47,265.00	\$84,685.00
Expenses	11,501.31	9,315.88	7,588.41	21,576.31
Probable loss	10,000.00	unknown	2,924.51	unknown
Amount of loans repaid.....	78,064.38	unknown	36,467.18	unknown
Amount still due	21,982.07	unknown	4,410.17	44,140.85
Bank notes retired.....	66,253.00	26,989.94	42,563.36	44,460.57
Debts in collector's hands.....	20,764.19	*7,686.57	not given	*35,992.98
Paid by debtor under relief act	966.82	628.00	335.25	*667.31

¹⁵²Ford, *History of Illinois*, 48.

¹⁵³January 25, 1834.

Knox points out, estimates of the loss to the state treasury do not afford an accurate view of the total damage inflicted by the state bank. The losses to individuals, the injury inflicted upon the economic activities of a pioneer community and the impairment of the state's credit cannot even be estimated.¹⁵⁴ According to a writer of the period, the industry and thrift that characterized the three years following the dissolution of the bank brought more genuine relief to debtors "than could ten such banks."¹⁵⁵

¹⁵⁴Knox, *History of Banking in the United States*, 716.

¹⁵⁵W. H. Brown, in *Chicago American*, December 25, 1840.

CHAPTER IV

BANKING AND INTERNAL IMPROVEMENTS.

With the winding up of the affairs of the old state bank in 1831 came a brief period of relief so far as the existence of local banks of issue was concerned. The legislature not only defeated all banking projects that were presented to it at its sessions in 1830-31 and 1832-33, but acts of incorporation of all sorts contained clauses prohibiting the exercise of banking powers. In the senate, however, there was a strong sentiment in favor of establishing a bank on a specie basis; in fact, in 1833 a project of this character was lost by a single vote.¹ Failing in this effort the friends of the proposed measure sought to prevail upon Governor Reynolds to call the legislature in special session, but he refused to act on the ground that conditions were not yet ripe for such an institution.²

In the gubernatorial campaign of 1834 General Duncan, the successful candidate, although a partisan of the United States bank refused to make that institution a local issue and thus avoided the alienation of the Jackson men.³ Governor Reynolds resigned a short time before the inauguration of Governor Duncan, the office being filled for the time being by Acting Lieutenant-Governor Ewing, a friend of state banking. In his message to the legislature which assembled in December, 1834, Mr. Ewing urged the immediate establishment of a state bank "upon a solid gold and silver reality."⁴ The next day Governor Duncan delivered his inaugural address in which he asked the legislature to deal with the banking question with the greatest caution. He granted that "banks may be made useful in society" but he insisted that a system of banking which would successfully meet the peculiar conditions prevailing in Illinois had not yet been worked out.⁵

¹*Sangamo Journal*, March 9, 1833.

²*Alton American*, November 22, 1833.

³Short, *History of Morgan County*, 691.

⁴*Senate Journal*, 1834-35, p. 12.

⁵*Ibid.*, 13.

Meanwhile the state had begun to recover from the follies of the fiat paper days in spite of the fact that occasional foreign bank notes found their way into the channels of local trade. The treasury was now able to meet its obligations with cash and the general prosperity of the community was equally encouraging.⁶ As this situation continued, the need of more currency and adequate banking facilities became recognized. After the burning of the notes of the old state bank and the failure of so many of the "paper money mills" of the Middle West and South, there was little available currency for the handling of the increasing volume of trade. Aside from a few notes of the Bank of the United States and still fewer United States silver coins, Spanish, French and Mexican pieces constituted the only generally acceptable medium of exchange.⁷

In addition to the scarcity of money, a number of other circumstances seemed to point the legislature to establishment of a second state bank. In the first place, it was predicted that the closing of the United States Bank would cause widespread distress unless the states took immediate steps to fill the gap left by it.⁸ The other states were anticipating an era of great prosperity by authorizing the establishment of banks of issue, and it was argued that their notes would flood Illinois unless a local bank were established as a measure of self-protection.⁹ Lastly

⁶Ford, *History of Illinois*, 170.

⁷Lorenzo Bull, in *Illinois Bankers' Association Reports*, 1901, p. 20.

⁸*Sangamo Journal*, November 24, 1832, September 29, 1833, and September 22, 1832.

⁹*Illinois Advocate*, Vandalia, March 16, 1833. *Sangamo Journal*, February 9, 1833. The following table taken from Dewey, *Financial History of the United States*, 255, shows the rapid expansion of banking at this period:

Year	Number of banks	Capital (millions)	Circulation (millions)	Loans (millions)
1829	329	110.2	48.2	137.0
1834	506	200.0	94.8	324.1
1835	704	231.2	103.7	365.2
1836	713	251.9	140.3	457.5
1837	788	290.8	149.2	525.1

this same wave of speculative prosperity which had gradually been moving westward was beginning to be felt in Illinois.¹⁰ Continued peace among the nations, together with the rapid expansion of the United States, had stimulated the sale of public lands to an enormous degree. This in turn led to the formulation of elaborate systems of internal improvement in order that a substantial increase in land values might result.¹¹ By 1835 the Illinois speculator had just reached the point where he was demanding the "accommodation" which could not be had without access to a bank plentifully supplied with notes.¹²

The Democrats in the Illinois legislature which met in 1834-35 were supposedly hostile to all banks, while the Whigs were committed to a federal as opposed to a state bank. By a combination, however, of the Whig forces with those Democrats who interpreted President Jackson's hostility to the Bank of the United States as an indorsement of the state institutions, a bill for the creation of a new state bank was passed by both houses. Ford contends that the necessary majority of one vote in the lower house was obtained by trading a states attorneyship for it and that similar inducements were held out to senators.¹³ In the council of revision Governor Duncan opposed the measure, but the rest of the members gave it their sanction and it became a law on February 12, 1835.¹⁴

The main provisions of the charter of the new state bank were as follows: Of the authorized capital of one and one-half million dollars, all but one hundred thousand dollars was to be sold to individuals. The remaining shares were to be issued to the State of Illinois whenever the legislature saw fit to provide the money.¹⁵ A further stock issue to individuals of a million dollars might be made when conditions warranted it.¹⁶ The charter was

¹⁰Ford, *History of Illinois*, 170.

¹¹Dewey, *Financial History of United States*, 224, 225.

¹²Ford, *History of Illinois*, 170.

¹³*Ibid.*

¹⁴*Sangamo Journal*, May 13, 1842.

¹⁵*Laws of Illinois*, 1834-35, p. 7, Section 1.

¹⁶*Ibid.*, Section 2.

to expire January 1, 1860.¹⁷ Until then the bank had full power to discount bills and notes, receive desposits, buy and sell bullion and bills of exchange and issue bank notes.¹⁸ The ownership of real estate, aside from the land upon which the bank buildings might be built, was prohibited.¹⁹ In view of the freedom with which the bank's funds were used in speculation, it is important to note that the directors were specifically forbidden to deal directly or indirectly in the purchase or sale of any goods or wares whatever.²⁰ The movement of population northward led the legislature to locate the principal bank at Springfield instead of Vandalia, which continued, however, to be the capital until 1839. In order to appease the people of Vandalia, the bank was required to maintain a branch in that place.²¹ If subscriptions for more than the authorized one million four hundred thousand dollars worth of stock were received, it was provided that the excess should be deducted: first, from the amounts subscribed by non-residents; second, from subscriptions by corporations; third, from subscriptions for more than one thousand dollars worth of stock; fourth, from other subscriptions.

Each subscriber was required to make a first payment of ten dollars in specie, or its equivalent, for each share of stock purchased.²² The nine directors were each required to own at least ten shares of stock and must be citizens of Illinois. In voting, the method already described in connection with the territorial Bank of Illinois, of giving to the small stockholder more than a proportional voice, was adopted.²³ The selection of officers for the bank was left to its board of directors. In order to augment its available capital the bank was empowered to receive on deposit or to borrow any sum not exceeding one million dollars

¹⁷*Laws of Illinois*, 1834-35, p. 7, Section 3.

¹⁸*Ibid.*, Section 4.

¹⁹*Ibid.*, Section 5.

²⁰*Ibid.*, Section 6.

²¹*Ibid.*, Section 8.

²²*Ibid.*, Section 10.

²³*Ibid.*, Section 11.

and to re-loan it at not more than ten per cent upon Illinois real estate. The restriction was made, however, that no loan should exceed half the value of the pledged property and that no borrower should be granted a loan from this fund for a longer period than five years.²⁴ When the bank had accumulated two hundred fifty thousand dollars in specie, the directors were to notify the governor who in turn should send persons to count the money and to receive the oaths of the bank's officers to the effect that the money was the bona fide property of the bank. As soon as the governor was satisfied that the bank had complied with the terms of its charter he was to proclaim through at least four Illinois newspapers that the bank was ready for business.²⁵ The payment of the remaining instalments on the bank's shares was left to the discretion of the directors who were empowered to declare shares forfeited if the owner failed to respond to a call.²⁶ The lawful rate of interest for loans of sixty days and less was fixed at six per cent. Other loans were to bear a rate of eight per cent.

The legislature made an effort to safeguard the interest of the holders of the bank's notes by providing: (1) The outstanding issue of notes should never exceed two and one-half times the amount of paid up capital; (2) The amount of loans and discounts should never exceed three times the paid up capital; (3) Each director was personally liable for the violation of these provisions unless he had caused a written protest to be incorporated in the minutes;²⁷ (4) If any note holder, within ten days after making the demand, failed to receive specie to the full face value of a state bank note, the bank was required to go into liquidation; (5) Furthermore, a penalty of ten per cent per annum must be paid to all such note holders until their notes were redeemed;²⁸ (6) Finally, no note of

²⁴*Laws of Illinois*, 1834-35, p. 7, Section 18.

²⁵*Ibid.*, Section 19.

²⁶*Ibid.*, Section 20.

²⁷*Ibid.*, Section 24.

²⁸*Ibid.*, Section 26.

a less denomination than five dollars might be issued.²⁹ The legislature is further to be commended for providing that there should not be a repetition of the disgraceful relief laws which had characterized the history of the old state bank.³⁰

The constitution of 1818, as has already been noted, specified that there should be no other banks in the state save a state bank and the two territorial banks which were then in existence. The charters of the old territorial Bank of Illinois at Shawneetown and the City and Bank of Cairo corporation had never been declared void although the former concern had gone out of business in 1823 and the latter had never accepted its charter. Consequently it was assumed that their charters were forfeited by non-use.³¹ Nevertheless in their eagerness to share in the coming tide of prosperity and internal development, as Lyman J. Gage puts it,³² the Bank of Cairo "was galvanized into a sickly life" at Kaskaskia, and the Bank of Illinois corporation was reorganized and began business late in 1834.

The twenty year charter of the Bank of Illinois³³ would have expired on January 1, 1837, had not the legislature by an act approved February 12, 1835,³⁴ extended its lease of life until 1857. The old charter was amended in several important respects. In the first place, the owners of the territorial bank who held stock in the new institution were exempted from the forfeiture of their stock and all previous payments upon it, if they were unable to meet the calls of the directors for instalments. On the contrary, they were entitled to the payment of all past instalments, less interest and dividends. Secondly, the governor was required to subscribe for the one hundred thousand dollars worth of stock reserved for the

²⁹*Laws of Illinois, 1834-35, p. 7, Section 34.*

³⁰*Ibid.*, Section 31.

³¹Greene and Thompson, *Governors' Letter Books*, ii, 60, 61.

³²*World's Congress of Bankers and Financiers*, 428.

³³This bank should not be confused with the new state bank of Illinois.

³⁴*Laws of Illinois, 1834-35, p. 21.*

state in the old charter.³⁵ This he was to sell at auction at the highest premium, the profit to go to the state.

There were many more or less disinterested persons who were opposed to allowing the Bank of Illinois to resume business in the face of a constitutional prohibition of all non-state banks.³⁶ The question was at length taken into the courts where, first, the validity of the original charter was attacked on the ground that Congress had never given to the Territory of Illinois the power to establish banks; secondly, the act of 1825 was held to charter a private institution in contravention of the Illinois constitution. The question was finally disposed of by the supreme court of the state in *People vs. Marshall*,³⁷ when it was decided that the legislature of the territory had acted within its rights in chartering banks and that the charter then granted had never passed out of existence.

The books for subscriptions to the stock of the state bank were opened on April 10, 1835³⁸ and in less than three weeks the one million four hundred thousand dollars worth of stock was several times over-subscribed,³⁹ the total applications for stock amounting to \$8,007,500.⁴⁰ In accordance with Section 10 of the charter, the subscribers were divided into four classes, (1) non-residents, (2) corporations, (3) those resident citizens who subscribed for more than a thousand dollars worth of stock, (4) other persons. Beginning with class four and proceeding in reverse order to the other classes the shares were to be given out as long as they lasted. John Tillson of Hillsboro, Thomas Mather of Kaskaskia, Godfrey, Gilman and company of Alton, Judge Smith⁴¹ of the

³⁵*Laws of Illinois*, 1816-17, p. 11.

³⁶Greene and Thompson, *Governors' Letter Books*, ii, 59, 60.

³⁷1 *Gilm.*, 672.

³⁸*Sangamo Journal*, April 11, 1835.

³⁹*Ibid.*, May 2, 1835.

⁴⁰*Ibid.*, May 23, 1835. *Chicago Democrat*, May 20, 1835.

⁴¹One of the persons attacked by Governor Edwards for the mismanagement of the Edwardsville branch of the old state bank.

state supreme bench, and Samuel Wiggins of Cincinnati⁴² had contracted in the East for large amounts to be invested in state bank stock. The charter of the bank sought to avoid this very thing by giving the preference to the small resident subscribers. Hence, in order to be included in this favored class, these men, according to Ford, empowered thousands of persons within the state to act as their agents in subscribing for the stock and thus secured a controlling interest. When the commissioners in charge of the subscription lists undertook the work of apportionment of shares, a struggle for the control of the bank was precipitated between Judge Smith on the one side and the other persons just named on the other. The first clash came when a commissioner moved that shares bought by residents on their own account be separated from those bought by them as agents for others. Judge Smith favored the motion and expressed his willingness to take oath to the effect that he owned and had paid for with his own money every share of stock subscribed for by him. Through the preponderating influence of the other heavy investors, the motion was lost and the bank was thereafter controlled by the Tillson, Mather, Godfrey-Gilman interests. Mather was made president of the bank and a directorate was chosen which even Ford admits was as capable as could be found in the state.⁴³ The bank during its entire existence continued to be dominated by non-resident shareholders.⁴⁴

Having satisfied the governor that it had in its vaults the requisite two hundred and fifty thousand dol-

⁴²The capitalist who loaned \$100,000 to the state in 1831.

⁴³This account of the struggle for the control of the state bank is taken from Ford, *History of Illinois*, 174, and from the article on the state bank in the *Illinois Annual Register and Business Directory* (Chicago, 1847).

⁴⁴Of the 14,000 shares of \$100 each, five persons owned 7539, as follows: Samuel Wiggins, 1642; M. J. Williams, 577; Griggs and Company, 1202; W. S. Gilman, 2567. Four of the five lived in Cincinnati, Mr. Gilman being the only resident of Illinois. Eleven others controlled 3948 shares, making a total of 11,487 shares in the hands of but sixteen persons. *Sangamo Journal*, March 5, 1836.

lars in specie, the principal bank was opened for business in July, 1835.⁴⁵ Before the end of the year branches had been established at Galena, Jacksonville, Alton, and Chicago in addition to the branch located at Vandalia by the legislature.⁴⁶ Galena and Alton were probably chosen because of the great interest that centered in their development and because, as will be seen, the leading investors in bank stock were heavily involved in the projects that were being carried on at these points. The legislature having by the act of January 16, 1836, authorized three additional branches⁴⁷ establishments were eventually opened at Danville, Quincy, Belleville, and Mt. Carmel.⁴⁸ Mr. N. H. Ridgely, who had secured his training as chief clerk of the branch of the United States Bank at St. Louis,⁴⁹ was elected cashier of the principal bank at a salary of three thousand dollars. He was allowed one teller at a thousand dollars and two clerks at eight hundred dollars each. In addition, President Mather was voted twenty-five hundred dollars per annum for his services. By the time the nine branches were put into operation the list of officers had been increased to thirty-five and the annual salary list to \$30,600.⁵⁰

Even with the widely distributed system of branches, it was impossible for a person offering real estate as security to deal with the bank directly, hence the plan was adopted of designating persons in different localities as inspectors for the bank. These persons investigated, at the borrower's expense, the character of the property offered as security and made an examination of the title.⁵¹ In accordance with the charter, the amount

⁴⁵*Illinois Advocate*, July 8, 1835.

⁴⁶*Ibid.*, February 17, 1836; Bross, *History of Chicago*, 41.

⁴⁷*Laws of Illinois*, 1835-36, pp. 237, 238.

⁴⁸*Reports of Session*, 1839-40, p. 285.

⁴⁹U. S., H. of R., Comm. Reports, 1836-37, Doc. no. 193, p. 607.

⁵⁰*Reports of Session*, 1839-40, pp. 285, 286.

⁵¹*Sangamo Journal*, August 15, 1835. A fee of from three to ten dollars was paid. *Special Report of Invest. Comm., Illinois General Assembly*, 1836-37, p. 36.

loaned upon real estate could not exceed fifty per cent of the valuation put upon it by the bank's representatives. No loans upon town property were allowed⁵² and loans upon personal security were confined to the discounting of business paper, for the reason that the bank was not a government depository, hence was constantly subject to a loss of its specie on account of the heavy land sales.⁵³ The depository at St. Louis⁵⁴ accepted the notes of the state bank as far as private business was concerned, but when it was preparing to forward government deposits it was accustomed to send local bank notes home for redemption, a practice which compelled the Illinois bank to curtail its loans. All discounts were passed upon at the daily meeting of the exchange committee of the board of directors and were then submitted to the full board at its biweekly meeting. The exchange committee consisted of the president, the cashier and two directors chosen monthly and derived its name from the fact that its original function was to pass upon the purchase of bills of exchange. This branch of the bank's business received special attention and encouragement for the reason that bills of exchange were considered "safer" and "more manageable" than the ordinary accommodation paper even if the profits were not so large. Moreover, bills of exchange on eastern cities were readily convertible into specie if an emergency demanded it, while local accommodations could be called in only with the greatest difficulty. For this reason it was contended that eastern bills purchased by the bank could be used as the basis of a still larger volume of domestic loans.⁵⁵ The directors were de-

⁵²*Special Report, Invest. Comm., Illinois General Assembly, 1836-37, p. 36.*

⁵³*Saugamo Journal*, March 5, 1836.

⁵⁴*Ibid.*, May 21, 1836. After the disastrous failure of the Bank of Missouri, that state was left without any banking institution save the branch of the United States Bank which was soon to go out of existence. The legislature refused to charter any more banks, so the large federal deposits were given to the St. Louis "agency" of the Commercial Bank of Cincinnati. *U. S., H. of R., Comm. Reports, 1836-37. No. 193, p. 598.*

⁵⁵*Special Report, Invest. Comm., Illinois General Assembly, 1836-37, p. 40.*

terminated to prevent a depreciation of the bank's notes and yet desired to accomplish this aim with a minimum payment of specie for their redemption. This policy of trying to avoid both "Scylla and Charybdis" at times compelled the adoption of some extraordinary measures. For instance, while the negotiations were in progress with the St. Louis depositary which led to its agreeing to accept state bank paper under the conditions noted above, a large amount of the Illinois notes accumulated at St. Louis. Since the depositary had not yet decided to accept them at par, merchants sold them to brokers at a discount of two or three per cent rather than go to the trouble of sending them back for redemption. This caused great anxiety on the part of the state bank officials, and funds to the amount of nineteen thousand five hundred dollars were promptly forwarded to an agent of the state bank at St. Louis with the instruction that he should buy all the Illinois paper offered, at one per cent discount. He had bought very little of the paper when the depositary agreed to accept Illinois paper and the notes went to par. The directors of the bank were then accused of making a profit by speculating in their own paper, but testified before a committee of the legislature that the small profit made was more than offset by the expenses incurred.⁵⁶ On another occasion, President Mather purchased sixteen hundred dollars worth of the bank's paper from a New York broker at a discount of one and three-fourths per cent, his excuse being that it was liable to fall into the hands of westward bound immigrants who would present it for redemption.⁵⁷

The bank had, however, a most effective means of protecting its small supply of specie. Instead of having a common form of bank note, redeemable at the parent bank or any of its branches separate issues were provided for each branch. Consequently, notes bearing the name of one branch were sent to another and distant branch

⁵⁶*Special Report, Invest. Comm., Illinois General Assembly, 1836-37, p. 40.*

⁵⁷*Ibid.*

to be loaned, but were redeemable only at the place named on the face of the note. In this way, the whole of the note issue was kept in circulation without many demands being made upon the specie reserve.⁵⁸

On December 7, 1835, the governor convened the legislature in special session to consider, among other things, the advisability of increasing the capital stock of the state bank. It will be recalled that one hundred thousand dollars of the original issue was reserved for the state but that the amount owned by private individuals could be increased by one million dollars. The charter did not specify whether the state or the bank could control this additional issue of stock, hence Governor Duncan urged the legislature to exercise the privilege of issuing and selling these shares before the bank had a chance to act. At the time the governor's call was issued, state bank shares were quoted at 113 and the prospect of an addition of one hundred and thirty thousand dollars in premiums to the state's revenues appealed to the governor as a wise stroke of policy. By the time the legislature assembled, however, the stock had fallen in price, but Governor Duncan predicted that it would soon rise to 120 or even 130. He therefore urged the immediate passage of an act designating the state as an agent to sell one million dollars worth of state bank stock at not less than one hundred ten dollars per share, the premium to go to the state treasury.⁵⁹

The bank's friends in the legislature were too numerous and influential to submit to such a plan, and secured in its stead the passage of the act of January 16, 1836, to which reference has already been made. In addition to the section providing for three additional branches, the act specifically reserved to the directors of the bank the right to sell additional issues of stock. Furthermore, it was definitely stated that the profits accruing from the

⁵⁸*Chicago American*, March 12, 1836; Ford, *History of Illinois*, 179; *Special Report, Invest. Comm., Illinois General Assembly*, 1836-37, p. 36.

⁵⁹Governor's message, *Senate Journal*, 1835-36, p. 9.

sale of shares should belong to the bank.⁶⁰ Section 25 of the charter had provided that the bank should be granted ten days in which to redeem its notes. The time was now extended to sixty days.⁶¹ As a compensation to the state for the privileges above granted, the bank was required to relieve the state of the payment of the principal and interest of the loan of one hundred thousand dollars secured from Samuel Wiggins in 1831.⁶² The bank accepted this condition June 9, 1836, and paid the interest on the loan until 1841, when it was relieved of further responsibility in the matter by surrendering one hundred thousand dollars in state bonds.⁶³ Meanwhile the directors issued for sale at public auction the additional one million dollars worth of stock and made an arrangement with Mr. Wiggins whereby a syndicate organized by him was to purchase at 110 all the shares left unsold. When the auction was over it was found that only 1335 of the shares had been sold, so Mr. Wiggins and his partners were compelled to take the remaining 8665.⁶⁴

The legislature at the special session to which reference has just been made provided that the bills of the state bank and branches should be receivable for state and county taxes and in payment of the principal and interest of the debts due the college, school and seminary funds. A proviso was made, however, that the state bank was not to construe the act as preventing the state from conferring a like favor upon the bills of the other Illinois banks. In spite of the auspicious beginning made by the state bank, the legislature had learned that it was best to be forearmed when dealing with paper money. Accordingly the proviso was inserted in the bill that if the governor, auditor and treasurer should decide that the state was likely to suffer any loss by accepting state bank notes, they should at once cause a notice to be inserted in every

⁶⁰*Laws of Illinois*, 1835-36, p. 237, Section 1.

⁶¹*Ibid.*, Section 3.

⁶²*Ibid.*, 238, Section 4.

⁶³*Reports of Session (H. R.)*, 1851, p. 485.

⁶⁴*Reports of Session (Senate)*, 1840-41, p. 336.

newspaper of the state to the effect that these notes were no longer receivable in payment of public dues.⁶⁵

It will be recalled that one of the influences which aided in securing the passage of the bank bill was the prospect of securing a share of the federal deposits. The very day⁶⁶ on which the charter of the bank was approved, Mr. Mather took the matter up with the Washington government through Senator Kane.⁶⁷ A few weeks later Theophilus W. Smith, who had not yet crossed swords with his opponents for the control of the bank, urged Secretary of the Treasury Woodbury to take favorable action at once in order to facilitate the sale of the stock.⁶⁸ To these letters as well as similar communications from other Illinois bank promoters, Secretary Woodbury made the same reply, that he did not feel justified in making a depository of a bank which as yet existed only on paper.⁶⁹ As soon as the bank was ready for business, a formal application was made but Mr. Woodbury pleaded as an excuse for delay a lack of definite information as to the ownership and financial standing of the bank. A list of the stock holders was promptly forwarded to him, together with statements as to the bank's standing at various intervals. Mr. Woodbury next sought to discourage the directors by indicating to them the little need there was for a disbursing agency in a thinly populated community. He warned them that the large revenues collected in the state from the sale of public lands would have to be transferred at once to other parts of the country, leaving but a very small permanent balance with the state depository.⁷⁰ President Mather, however, promptly expressed

⁶⁵*Laws of Illinois*, 1835-36, p. 244.

⁶⁶February 12, 1835.

⁶⁷Page 599 of the proceedings of the special committee appointed by the national house of representatives to investigate the relations which existed between R. M. Whitney, special examiner of depository banks, and R. M. Whitney and Company, Washington, representatives of a number of depositories.

⁶⁸U. S., H. of R., *Special Comm. Report*, 597.

⁶⁹*Ibid.*

⁷⁰*Ibid.*, 604.

the willingness of the directors to be content with whatever funds the government saw fit to allot to them.⁷¹ In the meantime Judge Smith, defeated in his attempt to control the bank, carried the fight to Washington. With his letter to Mr. Woodbury, attacking the men in control of the bank, he inclosed a copy of the proceedings of the commission which allotted the shares of stock. Having but a few months before besought Mr. Woodbury to make the bank a depository, Mr. Smith now felt it his special duty to apprise the treasury department of the great danger of entrusting the present regime of unscrupulous politicians with government funds.⁷²

It is well to note here that the bank was under the control of Whigs and that Mr. Smith and other political opponents used this fact against it with the Jackson administration. In like manner, William Kinney in a letter to Mr. Woodbury characterized the state bank as an "institution--- chartered by the influence of a designing man for the sole purpose of speculation both in pecuniary and political matters." He predicted that if this Whig institution were entrusted with federal deposits it would be so ungrateful as to turn against the Van Buren cause and "throw sand in the eyes of the present administration and its true advocates."⁷³ A similar communication was received by Mr. Woodbury from Samuel McRoberts, a receiver of public money. He warned the administration "that the president and nearly all of the directors of the principal bank, all the cashiers of the branches, and an immense majority of the branch directors have been most decided opposition men to General Jackson, to his measures, to his friends and supporters." He hoped that so long as the bank continued in the hands of the "federal party" it might not receive the patronage of the government.⁷⁴ One cannot get the least inkling from Mr. Woodbury's replies to these men or from any of his utterances

⁷¹U. S., H. of R., *Special Comm. Report*, 604.

⁷²*Ibid.*, 605 ff.

⁷³*Ibid.*

⁷⁴U. S., H. of R., *Special Comm. Report*, 612.

in connection with the whole affair that he was swayed by political considerations but without giving a formal decision against the state bank, he early developed an unfavorable attitude toward its case.⁷⁵

As the heavy drain upon the bank's specie continued with the increased land entries, the directors decided to adopt more summary measures in order to secure the government deposits. Accordingly they sent one of their number, Mr. John Tillson, to Washington to wait upon the treasury officials. When he reached New York, en route, Mr. Tillson sought to pave the way by writing to Reuben M. Whitney, special examiner of depositaries, asking him to use his influence with his chief, Mr. Woodbury. He promised that if all went well, Mr. Whitney's firm would be employed as the Washington representatives of the Illinois state bank at whatever salary it was customary for a western bank to pay for such a service.⁷⁶ In reply, Mr. Whitney stated very frankly that the department was unfavorably disposed toward the bank and announced his intention of doing all in his power to prevent the selection of such an institution as a federal depository even if such action involved the loss of a substantial fee. Unlike his superior officer, Mr. Whitney did not hesitate to bring political considerations into the matter by declaring that an institution which had openly worked for the election of its friends to represent the Springfield district in the legislature was unfit to handle government funds. Notwithstanding this rebuff, Mr. Tillson proceeded to Washington and presented his case to the treasury officials.⁷⁷

In a letter of December 8, 1835, addressed to President Mather, Mr. Woodbury furnished the officers of the bank a definite list of charges that had been made against it.⁷⁸ The first of these was that the stock had been allotted illegally. The second, that the bank was merely posing

⁷⁵U. S. H. of R., *Special Comm. Reports*, 612, 613.

⁷⁶*Ibid.*, 603.

⁷⁷*Ibid.*, 602.

⁷⁸*Ibid.*, 613.

as a state bank in order to exist in contravention of the state constitution. The third, that the notes issued at one branch were put into circulation at some other distant branch which refused to redeem them.⁷⁹ To these charges, Mr. Woodbury added the personal objection that the branches at Galena and Chicago, the only places where the bank could be of much service to the government, had not been placed in operation. He inclosed a blank bond and application sheet, however, and asked that they be returned, filled out, together with the bank's answers to the charges. Mr. Mather's reply⁸⁰ to the charges is a crude attempt at evasion and subterfuge. He stated that "the distribution of the stock was in conformity with the provisions of the charter—the whole of it being assigned to citizens of the state in the manner defined by the charter." He admitted that the state did not own a dollar's worth of stock in the bank but considered that it still had "an interest" in the bank so long as the bank was required to pay an annual tax into the state treasury. He failed to see how any person could consider a charter unconstitutional which had received the unanimous approval of the supreme judges sitting as members of the council of revision. The reply of Mr. Mather to the charge that the branches were refusing to redeem one another's notes is somewhat vague. He admitted that separate sets of notes were ordered for each branch and that these had just been received from the printer, but he did not promise that the notes of one branch would be redeemed by another. He explained further that until they had received their separate issues the branches had been issuing the notes of the parent bank. As to whether the branches ever refused to redeem this temporary issue, Mr. Mather replied vaguely: "Of course, the bank could not have refused to redeem its notes, as stated. I will add, that all the present paper issued at Alton has been promptly re-

⁷⁹The Alton branch is mentioned in particular. Mr. Woodbury obtained this information from T. W. Smith's letter of November first. *Ibid.*, 614.

⁸⁰*Ibid.*, 615.

deemed there whenever presented." In closing, Mr. Mather assured Mr. Woodbury that the Galena and Chicago branches were now in a position to take care of government deposits. A few weeks later, Mr. Woodbury submitted the question of the constitutionality of the bank to Attorney General Butler and was given the opinion that it was not a state institution and therefore its whole existence was in defiance of the Illinois constitution.⁸¹

The directors of the bank, realizing the futility of further effort, formally requested Mr. Woodbury to "suspend" the application of the bank until he received further notice.⁸² The statement of Mr. Whitney in his letter to Mr. Tillson that the bank was meddling in Illinois politics aroused the anger of the Illinois Whigs. As a result the state senate in January, 1836, appointed a committee of five to take evidence, first, as to whether the control of the public money had not been put to an improper use by the Jackson administration in trying to force local banks to support Van Buren; second, as to whether Mr. Whitney, who was "now stationed near the treasury," was not holding an improper correspondence with the state bank officials.⁸³ The committee examined the correspondence of the bank and summoned Colonel Mather, Judge Smith, Samuel Wiggins and others to testify, but aside from making "political capital" nothing came of the investigation.⁸⁴ In August, 1836, the Shawneetown bank was made a special depository for the public money collected at the Shawneetown land office⁸⁵ and for a time had the use of considerable sums of money, but as the government land sales diminished this amount on deposit decreased until after 1836 a nominal deposit of only forty

⁸¹*Sangamo Journal*, May 13, 1842. In connection with the question of constitutionality, it is interesting to note that Judge Smith, who drew up the charter and fought for its passage, was in hearty accord with the attorney general's opinion. Ford, *History of Illinois*, 179.

⁸²U. S., H. of R., *Special Comm. Report*, 619.

⁸³*Senate Journal*, 1835-36, p. 259.

⁸⁴*Missouri Republican*, January 19, 1836.

⁸⁵*Sangamo Journal*, August 27, 1836.

dollars was kept in the bank, probably as a sort of "retaining fee."⁸⁶

By midsummer, 1836, the country-wide wave of speculation in land and town lots had reached Illinois. Under its influence Chicago grew like magic from a mere settlement to a city of several thousand inhabitants and became the center of the real estate business of the adjoining states and territories. It was in Chicago that town site speculators exhibited their plats and auctioned off their lots. Her fame spread rapidly through the East and started a stream of immigration by way of the Erie Canal and the Great Lakes. The mania for speculation spread throughout Illinois with the result that the interests of legitimate business were everywhere sacrificed to the desire for suddenly acquired riches.⁸⁷ The demand for loans at the state bank far exceeded its accommodations on account of a lack of specie. Since the issuance of the specie circular, the heavy drain on the bank's cash reserves by land purchasers now came directly from the purchasers themselves, whereas before they paid with notes of the bank which were later returned by the depository bank for redemption.⁸⁸ As a consequence of this condition, the bank suspended its discount business until it received a shipment of \$280,000 in gold and silver from New York and New Orleans.⁸⁹

The people of Illinois, as well as the citizens of the older states, were beginning to be carried away with the idea that improved means of communication must be provided regardless of the cost. In Illinois this idea was

⁸⁶Various reports of the bank show the following amounts on deposit by the United States treasurer:

January, 1837	\$81,414.00
January, 1838	28,142.47
November, 1838	40.00
November, 1839	40.00
November, 1840	40.00

and so on until the bank went into liquidation.

⁸⁷*Reports of Session* (Senate), 1839-40, p. 5; Ford, *History of Illinois*, 181.

⁸⁸*Sangamo Journal*, August 13, 1836.

⁸⁹*Illinois Register* (Vandalia), November 4, 1836.

given expression through the press and in mass meetings in the principal towns. When the general assembly convened in December, 1836, an internal improvement convention also assembled at the capital for the purpose of influencing the members of the legislature to provide for an elaborate system of railroads and waterways.⁹⁰ The legislature responded most liberally. Instead of merely providing for the completion of the canal between the Illinois River and the Great Lakes, a task which alone would have been a strain upon a pioneer community, they authorized the immediate construction by the state of seven railway lines and the dredging of all the important rivers. As an anti-climax to the whole performance, the sum of two hundred thousand dollars was voted as a gift to those counties which had not been given a line of railroad.⁹¹ In order to carry out this program the legislature authorized a loan of eight millions, an amount eight times as great as the total expenses of the state government from its inception to the year 1836. The next problem, however, was not so easily solved: How was the enormous annual interest bill to be met? The people were already as heavily burdened with taxes as their meager resources would permit and no legislator would have the courage to face his angry constituents after proposing or voting for such a measure. At length it occurred to the framers of the bill that the banks could be made a part of the internal improvement system. As one of the leading journals of the state put it: "In connection with our internal improvement system it is impossible not to associate the banks of this state—the interests of both are alike and rest alike upon enlightened public opinion. One is the hand-maid of the other, and since the internal improvement system is based upon credit it cannot be carried on without the aid of banks."⁹²

⁹⁰C. M. Thompson, *Governors' Letter Books*, ii, Introduction, li; see also Douglas, *Autobiography*, in *Illinois State Historical Society Journal*, October, 1912.

⁹¹*Lates of Illinois*, 1836-37, pp. 121, 131-133, 134-136.

⁹²*Sangamo Journal*, January 27, 1837.

During the eighteen months of its existence the state bank had declared dividends aggregating seven dollars and seventy-five cents a share,⁹³ an amount equal to nine per cent on the paid up capital, and the Bank of Illinois had done quite as well.⁹⁴ It seemed plausible to the members of the legislature, therefore, that if the state became the owner of a large amount of profitable bank stock, the financial obligations of the internal improvement system could be met with ease. Accordingly there was inserted in the internal improvement act the following provision: "All profits arising from bank and other stocks hereafter to be subscribed for and owned by this state, after liquidating the interest on loans contracted for the purchase of such bank or other stock," should be devoted to the payment of the interest on the eight millions to be borrowed for internal improvements.⁹⁵ Governor Duncan in his message to the legislature⁹⁶ had recommended that the state subscribe only for the one hundred thousand dollars' worth of stock reserved for it in the charter of the state bank, but the legislature was not disposed to stop at this modest sum. By the acts of March 2 and 4, 1837, not only was the one hundred thousand dollars' worth of stock subscribed for, but the capital of \$2,500,000 was increased to \$4,500,000,⁹⁷ and the state took the whole additional issue of \$2,000,000.⁹⁸ At the same time the capital stock of the Bank of Illinois was increased from \$300,000 to \$1,700,000, of which one million dollars' worth was to be subscribed for by the state.⁹⁹

In order to provide the necessary funds for the purchase of this stock, the board of fund commissioners, a

⁹³*Report of state bank investigating committee*, 1836-37, p. 36.

⁹⁴*Senate Journal*, 1836-37, pp. 352 ff.

⁹⁵*Laws of Illinois*, 1836-37, p. 137.

⁹⁶*Senate Journal*, 1836-37, p. 22.

⁹⁷Only a small part of the million dollar additional issue of shares of capital stock to individuals was ever paid in, so the total capital liability was never much in excess of \$3,500,000. *Reports of Session (Senate)*, 1839-40, p. 301.

⁹⁸*Laws of Illinois*, 1836-37, p. 18.

⁹⁹*Ibid.*, Section 6.

body created to direct the financing of the internal improvements, was authorized to float a loan of not more than three million dollars. There were to be issued to the lenders shares of "Illinois Bank and Internal Improvement Stock," bearing interest at not more than six per cent, and redeemable by the state at any time after 1860.¹⁰⁰ In no case, however, could these bonds be sold for less than par. The fund commissioners were to dispose of enough bonds to enable them with the aid of available cash in the treasury to make a payment to the two banks equal to those already made by private stockholders on their shares. To the nine directors of the state bank were added five state directors elected biennially by a vote of the two houses of the general assembly.¹⁰¹ This arrangement was hardly a fair one, however, for it gave to the state, the owner of a majority of the shares, a minority of the directorate. In like manner, state directors were added to the board of the Shawneetown bank and its activities were enlarged by providing for branches at Jacksonville, Lawrenceville and Alton, and authorizing the establishment of two others.¹⁰² The bank law as well as the internal improvement act provided that the net profits arising from the stock must be applied to the interest upon internal improvement bonds. The banks were made the depositaries of the funds accumulating from the sale of bonds and were required to pay to the state a rate of interest agreed upon by both parties. Moreover, the act designated the banks as the fiscal agents of the state as long as quarterly statements of their condition indicated that they were solvent.¹⁰³

The original charter of the state bank permitted the directors to borrow any sum not exceeding a million dollars for the purpose of making loans on real estate. The legis-

¹⁰⁰*Laws of Illinois*, 1836-37, p. 18, Section 3.

¹⁰¹*Ibid.*, Section 8.

¹⁰²The bank of Illinois later established one of these at Pekin. *Laws of Illinois*, 1849, p. 39.

¹⁰³*Ibid.*, 1836-37, p. 18, Sections 10, 12.

lature now extended this privilege to the Bank of Illinois, but set a maximum limit of \$250,000.¹⁰⁴

The legislature still contained a considerable element hostile to banks and they succeeded in carrying a resolution providing for the investigation of the state bank's affairs by a joint committee of five.¹⁰⁵ The object stated in the resolution was to ascertain whether the bank had violated any of the provisions of its charter and was on that account not a fit place to keep the state's funds. In spite of the able opposition of Abraham Lincoln,¹⁰⁶ who contended that such an investigation was an unwarranted intrusion into the affairs of what was still a private institution, the resolution was adopted. The report of the committee declared that the bank's management was free from all questionable practices and declared that it was not only a safe place to keep funds, but that its shares would prove a good investment for the state.

A similar investigation of the Bank of Illinois throws light upon the general policy of conducting that institution since its revival in 1835.¹⁰⁷ The Bank of Illinois had not yet become a state institution and hence could have prevented any intrusion into its private affairs, but President Marshall was anxious to make a good impression and placed all the bank's records at the disposal of the committee, not to mention a bountiful supply of whisky and "plenty of sugar to sweeten it."¹⁰⁸ The bank was found to be owned and managed by practically the same men who had it in charge during its brief existence some years before. All the directors were men of good standing in southeastern Illinois, most of them having lived in the neighborhood of

¹⁰⁴*Laws of Illinois*, 1836-37, p. 17.

¹⁰⁵*Senate Journal*, 1836-37, p. 244.

¹⁰⁶*Sangamo Journal*, January 28, 1837. Mr. Lincoln was a member of the lower house, having been elected as a Whig from the Springfield district. He was a staunch friend of the state bank.

¹⁰⁷*Senate Journal*, 1836-37, p. 352. For complete report of the investigation see, also, U. S., *Letter of Secy. of Treas. on State Banks*, 1838, pp. 778-783.

¹⁰⁸Ford, *History of Illinois*, 197.

Shawneetown for over twenty years.¹⁰⁹ They had been impartial in making loans and discounts, restricting the latter to business men.¹¹⁰ As for loans, the entire business of the bank was confined to property loans in southeastern Illinois. The principal item of income arose from the purchase and sale of bills of exchange. The southern Illinois farmer usually shipped his grain and live stock down the river to New Orleans and drew a bill of exchange on the commission man in that city. These bills were sold to the bank and being payable at short dates were used to replenish its stock of specie. The committee found a reserve of specie on hand to the amount of \$47,278, and a few days later a shipment of \$23,300 arrived, making a total of \$70,578 as against an outstanding circulation of \$105,563 and deposits to the amount of \$110,000.

The committee found that the practice, forbidden by the legislature at this session,¹¹¹ had been indulged in of issuing bank notes payable at some point outside the state. Of the \$105,563 in bank notes then outstanding, \$83,178 had been issued at home, \$14,900 at Philadelphia, \$2,825 at Louisville, and \$4,660 at New Orleans. The bank had just redeemed \$8,500 of the Philadelphia issue, which left but \$13,885 to come under the ban of the new law. The directors gave as their reason for this foreign issue the desire to create at these places ample funds with which to meet the needs of Illinois merchants without seriously disturbing the bank's credits created by the shipment of grain and provisions. On the whole, the two committees seem to have had grounds for their laudatory comments on the management of the two banks.

With the entry of the state into the field of banking the situation was completely changed. Illinois had received from the federal government \$477,949.14 as her share of the surplus revenue distributed among the states in 1836.¹¹²

¹⁰⁹*Senate Journal*, 1836-37, p. 356.

¹¹⁰*Ibid.*, 355.

¹¹¹*Laws of Illinois*, 1836-37, p. 18.

¹¹²Auditor's Report, *Laws of Illinois*, 1836-37, p. 193.

The legislature devoted \$335,592.32 of this sum to the repayment of the amounts taken from the school fund by their predecessors and spent the rest in internal improvements. Since, however, funds were needed to pay for a portion of the state's bank stock in cash, the federal money just returned to the school fund was reborrowed and divided between the two banks.¹¹³ As soon as the new "Banking and Internal Improvement" bonds were ready, the commissioners proceeded to New York to offer them for sale, in order that the balance due the banks for the state's shares of stock might be met. On the day set for opening the bids for the bonds, the commissioners were chagrined to find that not a single offer had been made. The act forbade them to sell the bonds at less than par, so they were compelled to abandon their efforts. The banks were now so involved in the state's affairs that they agreed to accept the bonds at their face value in payment of the remainder of the state's stock; the state bank took \$1,765,000 worth and the Shawneetown bank, \$900,000. The latter bank afterwards succeeded in disposing of its share but those taken over by the state bank continued to burden its resources and embarrass its operations during the rest of its existence.¹¹⁴ The banks had scarcely begun to adjust themselves to their new relationship with the state when the panic of 1837 burst upon the country and left ruin everywhere.

Beginning in New York City, the first week in May, the suspension of specie payments by the banks spread like a contagion down the Middle Atlantic Coast and then to the West and South.¹¹⁵ By the twenty-second of May it had reached the St. Louis depository bank and a week later the Illinois banks voted to suspend for an indefinite period.¹¹⁶ In so doing the directors of the state bank undoubtedly realized that the legislature would not demand the winding up of the bank's affairs as a penalty for violat-

¹¹³*Senate Journal*, 1842-43, p. 36.

¹¹⁴Ford, *History of Illinois*, 190.

¹¹⁵*Sangamo Journal*, May 27, 1837.

¹¹⁶*Ibid.*, June 3, 1837; *Senate Journal* (special session), 1837, p. 12.

ing its charter by suspending specie payment, while the charter of the Shawneetown bank did not contain such a forfeiture clause at all. The banks and the state were now so closely associated that the sudden termination of the activities of either of them would result in indescribable chaos in the state's finances. Thoroughly alarmed at the possibility of such a contingency in the case of the state bank, two of the canal commissioners hastened to Jacksonville in search of the governor. They finally persuaded him to call a special session of the legislature in order that legal sanction might be given to the violation of the bank's charter. Accordingly at the opening of the special session in July, 1837, a memorial was presented from the state bank asking that the penalty of forfeiture be suspended. The legislature acceded to the request and authorized the suspension of specie payments until the end of the next general assembly. Certain stipulations were imposed, however, the chief of which were: (1) No dividend could be declared until the bank resumed specie payment; (2) No specie could be disposed of in any way, except in amounts of five dollars or less, for change; (3) A monthly statement of the bank's condition must be furnished the governor and the newspaper owned by the state printer; (4) The total issue of notes during suspension must not exceed the amount of capital actually paid in; (5) The state's funds must be collected and disbursed as usual; (6) Relief must be granted to the bank's debtors by allowing them to pay their notes in instalments; (7) If any of the foregoing provisions was violated, the bank's charter was *ipso facto* liable to forfeiture.¹¹⁷

A brief act was also passed at the special session authorizing the state to sell its stock in the banks to private individuals if funds were needed to meet the interest on internal improvement loans.¹¹⁸ Notwithstanding that the crisis now made their extravagant railroad and waterway program impossible of fulfilment, the legislature refused

¹¹⁷*Laws of Illinois* (special session), 1837, p. 6.

¹¹⁸*Ibid.*, 5.

to curtail the plans in any way. By the fall of 1837, hard times set in, but the banks were powerless to furnish aid to tide over the situation. Instead, the discounting of notes was reduced to a minimum and suits were instituted against delinquent borrowers, most of whom were business men. They in turn had done a very heavy credit business since 1835 and were compelled to force the farmers and artisans to settle with them.¹¹⁹ This caused a feeling of resentment against the banks among the rank and file of the people.

The Whig party and its newspaper organs remained loyal to the banks, but the Democratic journals either denounced all banks on general principles or favored their establishment on an absolutely specie-paying basis.¹²⁰ Even Governor Ewing, who had been instrumental in the establishment of the state bank, now turned against banks in general and his former pet project in particular.¹²¹

As conditions throughout the country began to improve the Illinois banks, after a suspension of over thirteen months, resumed specie payment, August 13, 1838.¹²² In Governor Duncan's farewell message to the legislature in December, 1838, he again urged in vain the repeal of the whole internal improvement system. As for the banks, he commended them for their voluntary resumption and for their general stability displayed during the crisis. To encourage the relief of the multitude of poverty stricken land holders he suggested that the state furnish, without any responsibility therefor, to any person lending money on Illinois land for five years at six per cent, circulating notes to the full amount of the principal, to be secured by the mortgage on the property, the lender to be allowed to circulate these notes freely provided he redeemed them promptly in specie.¹²³ Instead of giving serious consideration to the

¹¹⁹*Memoirs of Gustave Koerner*, 429.

¹²⁰*Sangamo Journal*, August 19, 1837.

¹²¹*Ibid.*, July 29, 1837.

¹²²*Ibid.*, August 18, 1838.

¹²³*House Journal*, 1838-39, p. 14.

governor's proposal, the legislature made more secure the monopoly of note issue enjoyed by the banks, by passing the act of December 4, which prohibited persons and private institutions from issuing notes.¹²⁴

Governor Carlin was a bank hater, and in his inaugural address took the reverse of his predecessor's position.¹²⁵ He denounced the state bank in particular and pointed out four dangerous defects in the existing system: (1) There was no adequate machinery for compelling the banks to comply with their charters; (2) They were allowed to meddle in politics with impunity; (3) The state bank was lending millions to a few speculators; (4) The legislature did not use the means it had of compelling the banks to live up to the letter of the law. While he deplored the fact that such an elaborate system of improvements had been inaugurated, Mr. Carlin was of the opinion that it was too late to turn back after an expenditure of ten millions had been made. The legislature heeded his advice by authorizing nearly a million dollars' worth of additional projects rather than surrender the principle of state construction of public improvements.¹²⁶ In addition to the act forbidding the issue of notes by unauthorized persons, several other minor bank laws were passed at this session. The first of these was known as the foreign small note act and had for its object the expulsion from the state of all notes of less than five dollars denomination. The state bank had been forbidden by its charter to issue notes smaller than five dollars and the Bank of Illinois had consistently followed the policy of not doing so,¹²⁷ hence the public had been compelled to depend for its small notes upon the issues of the Bank of Cairo and a miscellaneous assortment of foreign notes. By excluding foreign small notes a monopoly of the issue of ones, twos and threes was given to the Bank of Cairo, but, as will be seen, this privilege was later

¹²⁴*Minutes of Illinois*, 1838-39, p. 83.

¹²⁵*Senate Journal*, 1838-39, p. 18.

¹²⁶*Reports of Session (Senate)*, 1839-40, p. 5.

¹²⁷*Senate Journal*, 1836-37, pp. 354 ff.

exercised also by the Bank of Illinois and the legislature finally extended it to the state bank.¹²⁸ A third act relating to banks was passed at the 1838-39 session. It placed the selection of the state directors of the two banks in the hands of the governor, instead of the legislature.¹²⁹

The federal government still refused to establish a depository in the state, hence the depository at St. Louis continued to receive the large amount of land money collected from Illinois purchasers. The legislature by joint resolution again besought the secretary of the treasury to make the state bank a federal depository but he had no funds to place in the hands of the Whigs. The official reason given was that the banks of Illinois did not conform to the federal requirements by refraining from paying small bills to their patrons.¹³⁰ The secretary, however, found it convenient to use the Chicago branch of the state bank and in 1839-40 had nearly \$150,000 on deposit there.¹³¹ The failure to secure the federal deposits was a hard blow to the state bank and its excessive issue of notes soon began to depreciate.

Meanwhile the temporary revival of business in 1838 and the early part of 1839 was followed by a second crisis in the autumn of 1839. When the news reached Springfield, October 20, that the banks of the East and South had again suspended specie payment, the directors of the state bank were called together and again decided to order another suspension in spite of losing their charter by so doing. Messengers were despatched to every branch notifying them to suspend at once.¹³² The news spread quickly and the next morning a large amount of notes was presented at the bank for redemption; but the directors refused to pay out

¹²⁸*Laws of Illinois*, 1838-39, p. 79. The note issues of the Bank of Cairo will be taken up hereafter in connection with the history of that institution.

¹²⁹*Ibid.*, 234.

¹³⁰*Sangamo Journal*, January 19, 1839.

¹³¹*Reports of Session* (Senate), 1839-40, p. 310.

¹³²*Niles' Register*, lvii, 167.

any specie.¹³³ The directors of the Bank of Illinois at first decided that they were able to weather the storm,¹³⁴ but after making the attempt for two weeks they followed the example of the state bank.¹³⁵

The alarming condition of the state's finances caused the governor to convene the legislature in the special session of 1839-40. The credit of the state had been extended to the limit, the total liabilities aggregating \$11,107,919.44 and calling for an annual interest payment of \$637,800.¹³⁶ Furthermore, to provide funds to complete the work already authorized would increase the amount to \$21,846,444.50. Not only had the legislature ordered the work over the whole system of improvements to be undertaken simultaneously but they had, as has been noted, enlarged the scope of the work. The governor now urged that only one or two of the most important projects be continued. He then proceeded to criticize the state bank; first for having suspended specie payment again; second, for utterly disregarding the interests of the state and the general public by furthering the interests of a few speculators in lead and pork. He therefore recommended that no mercy be shown the bank and that its recent operations be subjected to a most searching investigation. The attitude of the governor and the legislature seems to have been more friendly toward the Bank of Illinois.¹³⁷ Consequently they were content to let that institution off with a demand addressed to its state directors for an explanation as to their votes in favor of suspension. The defense offered by the directors was that the interests of the state demanded that the bank's specie be thus protected during country-wide suspensions of specie payment. Furthermore, they argued that the constant advances to the state had weakened the bank's ability to withstand a drain of its gold and silver. The part of the reply that was calculated

¹³³*St. Louis Bulletin*, October 24, 1839.

¹³⁴*Shawneetown Voice and Journal*, October 26, 1839.

¹³⁵*Reports of Session* (Senate), 1839-40, p. 46.

¹³⁶*Ibid.*, 3.

¹³⁷*Ibid.*, 12.

to appeal to the legislature was the statement that if the bank must continue to pay out specie, it must curtail its discounts and loans to such an extent that no dividend could be paid on the state's million dollars worth of stock.¹³⁸

With regard to the state bank, the legislature decided to follow Governor Carlin's advice and give its affairs a thorough airing before a committee of the two houses. Although the majority of the committee appointed favored the bank wherever possible, they were forced to acknowledge in their report that startling abuses had crept into its management. All the members agreed that the bank had violated its charter by a suspension lasting more than sixty days, but on other more important matters the discord was so great that three separate reports were submitted to the legislature.¹³⁹ A number of persistent rumors about the bank were investigated by the committee and more or less truth was found in them. In the first place, the statement that money was loaned to non-residents was found to be correct but the amount had been greatly exaggerated, only four per cent of the loans having been made to persons outside of the state. There was a current rumor that Nevins, Townsend, and Company, the bank's eastern correspondents, were given the use of large sums without interest, but on the contrary the bank was found to have overdrawn its account with this house to the extent of \$150,000. Considerable suspicion having been attached to the stockholdings of Samuel Wiggins of Cincinnati, the committee made a careful inquiry as to the character of his relations with the bank. They found that of the original issue of \$1,400,000, Mr. Wiggins obtained \$193,100. He had paid some of the installments when called for, but in October, 1835, he had failed to respond to the call and was compelled to ask that the penalty of forfeiture of his stock be not inflicted for sixty days. Contrary to the bank's charter, he was granted a loan of a sufficient amount

¹³⁸*Reports of Session (Senate)* 1839-40 ¶ 128.

¹³⁹*Ibid.*, 241 ff.

to meet the call, by offering \$50,000 worth of his stock as collateral.¹⁴⁰ The bank not only renewed this loan from time to time, but in addition advanced enough money to enable Mr. Wiggins to complete the payments on his \$193,100 worth of stock. In over four years, he had repaid but \$18,500 of the \$58,500 borrowed but had continued to draw a semi-annual dividend on all the stock.

In addition to his personal holding, it will be remembered that Mr. Wiggins was a member of a syndicate which agreed to purchase all the second issue of a million dollars left unsold. They had paid eleven dollars on each of the 8,665 shares and were receiving a proportional share of the dividends and Mr. Wiggins had a correspondingly larger voice in the direction of the bank's management although ineligible to a place in the directorate. Aside from the accommodations granted to Mr. Wiggins, the bank had confined its activities very largely within the state. It had even refrained from accepting any considerable share of the St. Louis patronage which would have been exceedingly profitable on account of the large volume of produce which was transhipped at that point. But this failure to accommodate the business men of St. Louis was due to no exalted ideas of devotion to home interests but was the result of the selfish ambition of a small clique of Alton speculators to destroy the commercial supremacy of St. Louis and to amass great fortunes for themselves by diverting the commerce of the Mississippi to Alton. As has been noted, Godfrey, Gilman and Company, Alton commission merchants, had a large portion of the state bank stock under their control and unlike the other influential stockholders, were residents of the state and eligible to election as directors. Accordingly, Mr. Gilman had been a director of the parent bank for over three years and Mr. Godfrey had held a directorship in the Alton branch for almost as long a time. But for reasons which are about to be revealed, both had recently resigned their respective offices.¹⁴¹

¹⁴⁰*Reports of Session* (Senate), 1830-40, p. 274.

¹⁴¹*Ibid.*, 289.

Since the prosperity of their business depended upon the development of Alton at the expense of St. Louis, this firm proceeded to enlist the state bank in their campaign to make Alton the commercial emporium of the Mississippi Valley. Much of the corn and pork from the farms of the Middle West, as well as the lead from the mines at Galena on the upper Mississippi, were sold to St. Louis merchants and transhipped by them to southern or eastern markets, thus creating for the benefit of St. Louis brokers a large amount of credit in the money centers of the country.¹⁴² The region around Galena was exporting by way of St. Louis six or seven hundred thousand dollars worth of lead each year, the greater part of it to the Atlantic seaboard, and the directors of the state bank were allured by the prospect of becoming the possessors of the large amount of credit that would result from these shipments. Consequently, they were easily persuaded to make liberal advances to the Alton lead merchants, especially to their fellow directors, Messrs. Godfrey and Gilman. In fact, the accommodations to this one firm as drawers, discountors, and endorsers of paper amounted to \$800,748.00¹⁴³ before the other directors came to their senses and called a halt. The larger part of this liability had been created by the firm's transactions with H. H. Gear, a Galena lead producer, who, whenever he drew bills of exchange on them for shipments of lead, promptly sold them to the Galena branch of the state bank. The bank, however, was not wholly committed to the interests of one Alton concern for it had made similar advances of over one hundred thousand dollars to the firm of A. G. Sloo and Company.¹⁴⁴ With such generous financial backing the Alton commission men had combined for the purpose of raising the price of lead and succeeded in a short time in raising it from \$2.75 per hundred weight to \$4.25. In their efforts to corner the supply they bought with a free hand, but soon found that

¹⁴²*Reports of Session (Senate)*, 1839-40, p. 277.

¹⁴³*Ibid.*, 256.

¹⁴⁴*Ibid.*, 265; Ford, *History of Illinois*, 176.

they were unable to control the situation in the eastern market, which was supplied by scores of producers.¹⁴⁵ By the time their lead reached New York, the market had become so unsatisfactory that the whole large shipment was placed in the warehouses to await a rise in price. Meanwhile in addition to their speculations on the lead market itself, Godfrey, Gilman and Company had used several hundred thousand dollars of the bank's money in buying up mines and smelters and in speculating in Galena town lots.¹⁴⁶ The burden, therefore, finally became too great and they and their fellow speculators were compelled to bring their lead out of storage and sell it at a great sacrifice. Sloo and Company went into bankruptcy and the other firms were practically ruined. Mr. Gear of Galena was compelled by the directors to assume a large part of Godfrey, Gilman and Company's obligation, thus reducing that firm's liability to the bank to \$419,358.¹⁴⁷ The attempt to make Alton a great metropolis cost the bank nearly a million dollars and brought disaster to the city's legitimate business interests.¹⁴⁸

The connection of the bank with speculation in Illinois produce did not end here, for it came dangerously near to the point of speculating in lead and pork on its own account. In its eagerness to secure credit in the East the bank had united with some Galena mine owners in employing J. G. Lamb of Alton as their joint agent. According to the arrangement made with Mr. Lamb, these lead producers delivered their product to the Galena branch of the bank and were paid about three-fourths of its market value. The cashier then shipped the lead to Mr. Lamb, who in turn consigned it to Nevins, Townsend and Company, the bank's New York correspondents. When the lead was sold in the New York market, Nevins, Townsend and Company placed the proceeds to the credit of the state

¹⁴⁵*Reports of Session* (Senate), 1839-40, p. 277.

¹⁴⁶Ford, *History of Illinois*, 176.

¹⁴⁷*Reports of Session* (Senate), 1839-40, p. 265.

¹⁴⁸Ford, *History of Illinois*, 176.

bank. The bank in turn deducted the interest on the money paid to the lead producers and credited Mr. Lamb with the rest. Mr. Lamb then deducted his commission and other charges and sent the producer a check for the balance. Thus while the bank cannot be said to have speculated directly in lead it was guilty of devoting too large a share of its resources to the fostering of a highly hazardous undertaking.¹⁴⁹

The cashier and clerk of the Chicago branch also displayed a lack of good judgment, to say the least, by engaging in pork speculation with two Chicago commission men. They used over \$26,000 of the bank's funds in this way at a time when accommodations were being refused the legitimate enterprises of the city.¹⁵⁰

Closely related to the inquiry into the bank's relations with speculators was the charge that all the directors as well as members of the legislature had received a disproportionate amount of credit. In spite of the fact that Messrs. Godfrey and Gilman had now withdrawn from the directorate, it was found that \$493,227.57 was due the bank from its directors and the firms of which they were members. The president of the bank urged in defense of the practice of favoring the directors the consideration that these men gave a great deal of valuable time to the bank's business and were entitled to special consideration in lieu of a fixed salary.¹⁵¹ As for special favors being shown members of the legislature, the investigation showed that twenty-one members had borrowed over \$2,000 each, but that their total liabilities reached the modest sum of \$50,394.26.¹⁵² The extent to which the bank accommodated the different classes of borrowers, however, can be seen from the following table in which debtors are divided into groups according to the amount of their obligations.¹⁵³

¹⁴⁹*Reports of Session* (Senate), 1839-40, pp. 311 ff., 336.

¹⁵⁰*Ibid.*, 266, 331, 332.

¹⁵¹*Ibid.*, pp. 279, 287.

¹⁵²*Ibid.*, 307.

¹⁵³*Ibid.*, 290.

Amount	Number of borrowers
\$200 or less.....	1875
\$200-500	1408
\$500-1000	713
\$1000-3000	732
\$3000-5000	172
Over \$5000	202

Although the majority report of the committee expressed confidence in the bank's solvency, in spite of its reckless advances to favorites, an analysis of the official statement of the institution for January, 1840, reveals some assets of a very questionable value.¹⁵⁴ For example, the first item under "assets" (discounts, bills of exchange and loans) amounts to \$3,937,584.75, but Dr. Murphy of Chicago, a member of the committee, in his separate report, shows that at least \$921,461.19 of this amount should have been listed as a suspended debt.¹⁵⁵ The second item in the "asset" column, "Illinois State Bonds," shows that the bank had not been able to dispose of the \$1,765,000 in state bonds received in part payment of the state's shares, nor the \$699,750 worth of canal stock unloaded by the state upon the directors of the bank.¹⁵⁶ In view of the actual market value of Illinois securities, the bonds should have been entered at about half their face value instead of at par. It was evident, therefore, that if the bank were compelled to forfeit its charter because of its recent suspension of specie payment, the stockholders, including the state, would not be able to realize the full amount invested in the enterprise.

The legislature, although dominated by Democrats, many of them hostile to banks, decided that the state's interests demanded a further postponement of the penalty of forfeiture. By the act of January 31, 1840, the bank was allowed to continue the suspension of specie payments until the close of the next session of the legislature. The directors, however, were required to bind themselves to an

¹⁵⁴*Reports of Session* (Senate), 1839-40, 348.

¹⁵⁵*Ibid.*, p. 203.

¹⁵⁶*Ibid.*, 308.

agreement: (1) To make no more loans based upon the bank's stock; (2) To permit any person holding five or more shares to become a director; (3) To limit the amount of liabilities of any one person to \$10,000 in promissory notes and \$25,000 in bills of exchange; (4) To choose not less than three new directors at the next election and not less than two new members at each succeeding election; (5) To accept their own currency for all claims against them. In addition to these stipulations, the restrictions placed upon the bank during its former suspension were again put into force.¹⁵⁷

The use of bank funds for pork speculation by officers of the Chicago branch furnished an opportunity for some of the legislators to "get even" with the cashier of the branch by securing its removal from Chicago to Lockport, a village about forty miles away, on the line of the Illinois and Michigan Canal.¹⁵⁸ During its existence of less than four years the Chicago branch had been a factor in the rapid development of that city. It had furnished eastern exchange at from one to two per cent while its discounts of business paper averaged about \$500,000. The directors of the parent bank, however, decided to obey the mandate of the legislature and in July, 1840, closed the branch.¹⁵⁹ Scarcely had a beginning been made in the new location, however, when the legislature restored the branch to Chicago.¹⁶⁰ On the whole, the most commendable piece of legislation enacted at the special session, although it dealt only indirectly with the banks, was the repeal of the internal improvement act and the issuance of an order that all work be indefinitely suspended.¹⁶¹

The year 1840 witnessed some improvement in the general situation in Illinois but the banks were gradually falling into bad repute. Their notes, which had never

¹⁵⁷*Laws of Illinois*, 1839-40, p. 15.

¹⁵⁸*Ibid.*

¹⁵⁹*Chicago American*, August 7, 1840.

¹⁶⁰*Laws of Illinois*, 1840-41, p. 40.

¹⁶¹*Ibid.*, 1839-40, p. 93.

suffered a discount of more than two or three per cent, were now rated by brokers at ninety cents on the dollar. Hence it was estimated by Congressman Stuart in a speech in the federal house of representatives that the bank paper of Illinois was costing the people of the state one hundred and sixty thousand dollars a year in higher prices for goods bought in the East and lower prices for produce sold there.¹⁶² A number of Chicago business men made an unsuccessful attempt to drive Illinois bank paper out of circulation in that city, while the notes were dubbed "bank rags" by the newspapers.¹⁶³

Meanwhile the interest bill of the state had assumed such alarming proportions that Governor Carlin was forced to summon the legislature to meet two weeks before the regular date (December 7, 1840) in order that some way might be devised for providing the needed revenue. There had been so much resentment manifested toward previous legislatures which had levied additional taxes that some of the members favored a bill providing for the purchase by the state of three millions of additional bank stock, with the expectation that the dividends on the \$6,100,000 thus invested would not only pay the interest on the money borrowed to buy the stock but would suffice for the payment of the state's entire interest bill. In support of the project it was urged that the unsatisfactory condition of the banks was due solely to a lack of capital and if this were supplied, dividends would probably increase at once to the desired amount.¹⁶⁴ Governor Carlin was bitterly opposed to this plan and warned the legislature against all such chimerical schemes.¹⁶⁵ The matter was referred to the committee on banks, which presented in its report the following vivid picture of the existing situation:¹⁶⁶

"Such schemes of producing wealth as the multiplication of banks and paper money all end in disaster. Up to

¹⁶²Quoted by the *Vandalia Free Press*, June 26, 1840.

¹⁶³*Chicago American*, October 9, 1840.

¹⁶⁴*Reports of Session* (H. of R.), 1840-41, p. 13.

¹⁶⁵*Reports of Session* (Senate), 1840-41, p. 3.

¹⁶⁶*Ibid.* (H. of R.), 14.

1836-37, when their capital was increased, our whole debt was only \$100,000. Three years have elapsed and what is their history? Paper money multiplied, foreign debts created, visionary schemes of internal improvement commenced and abandoned—prodigality abounding in every department, until we find ourselves burdened with a debt of thirteen millions. The payment of this stock at the present rate of our bonds would involve borrowing four millions to pay three. Since 1837 the dividends have been constantly diminishing until we find them for the last year only equal to the interest on our bonds.¹⁶⁷ . . . The banks have been in operation for four years and during a large portion of the time have been in a state of suspension. . . . They have been unable to handle three millions rightly, then why give them three more?”

The legislature was convinced of the wisdom of this view and partially met the situation by voting an increase of taxes. The immediate needs, however, had to be met in a very questionable manner. The fund commissioners being unable to sell the state's interest bonds, hypothecated \$804,000 with Macalister and Stebbins of Philadelphia as security for a loan of but \$321,600. The firm remitted \$261,500, but, according to Ford, the state never was paid the rest.¹⁶⁸

By summoning the legislature two weeks earlier than the time fixed by the constitution Governor Carlin caused a very important question to be raised. The Democrats held that since the regular session could not lawfully begin until December 7, the session called by the governor was

¹⁶⁷The following table shows the fluctuation in the semi-annual dividend rate in the case of both banks. *Reports of Session* (Senate), 1840-41, p. 15.

	State Bank	Bank of Illinois
June, 1837	2½%	not given
December, 1837	5	not given
June, 1838	5	not given
December, 1838	4	3½%
June, 1839	4	4
December, 1839	3½	4
June, 1840	3	3

¹⁶⁸Ford, *History of Illinois*, 198.

entirely distinct from the regular session and must be adjourned sine die on the preceding legislative day, December 5. It will be remembered that the state bank was required by the recent suspension act to resume at the close of the next session of the legislature, but the directors naturally supposed that there were several months in which to prepare for resumption and had not given the matter serious consideration. When the Whig members realized the seriousness of the bank's situation, they planned to absent themselves from the room and thus break up the quorum and prevent adjournment. When the fifth of December arrived they proceeded to carry out their plot, but the Democrats grasped the situation and by guarding the doors and windows until a motion for adjournment could be carried, won the day and forced the bank to the choice of resumption or liquidation.¹⁶⁹

The state bank, in common with those of the entire West and South, had originally planned to resume voluntarily, January 15, 1841, but now that it was suddenly confronted with the danger of losing its charter, the directors hurriedly voted to resume at once.¹⁷⁰ In order to fortify itself as much as possible in its single-handed battle, the bank ceased discounting entirely and refrained from the issue of notes as far as possible. As a somewhat pardonable measure of revenge upon the legislature, it was ordered that all further advances to the state should cease. The bank had been very liberal in allowing the state to overdraw its account to the extent of \$196,000 and the directors estimated that at the present rate this overdraft would amount to about \$300,000 by the end of the next year. In undertaking to resume specie payments, the bank was not only compelled to cut off all sources of profit but was offering several cents premium for specie, hence its officers felt

¹⁶⁹Letter of W. Fithian to A. Williams, December 6, 1840, in *Williams-Woodbury Mss.*; Ford, *History of Illinois*, 225; *Reports of Session* (Senate), 1840-41, p. 12.

¹⁷⁰*Sangamo Journal*, December 18, 1840.

no compunctions about refusing further advances to the state.¹⁷¹

The directors had adopted this policy of resuming single-handed with the firm belief that the other banks would live up to their agreement to resume, January 15, but as that day drew near instead of specie, only excuses were offered to note holders and the State Bank of Illinois continued to fight it out alone.¹⁷² On January 25, the representatives of the banks of Kentucky, Indiana, Ohio and Illinois met in convention at Louisville to fix another date for resumption, but failing to reach a decision, they arranged for a second meeting at some distant date. The state bank's officials came home thoroughly discouraged, for there seemed to be no prospect for a general resumption within the next six months or possibly a year. During the bank's own brief period of resumption \$455,000 in specie had been withdrawn by note holders and it was evident that such a situation could not long continue.¹⁷³ And yet, on the other hand, the surrender of the charter would involve the sale of the state bonds at an enormous loss and the collection of loans at a time when the borrowers were unable to meet their obligations in full. The curtailment of the bank's activities and the contraction of the currency by the retirement of the \$455,000 of redeemed notes had already caused a fall in prices, and made the lot of the debtor increasingly hard. These considerations were presented by the directors of the state bank to the legislature in the form of a memorial, in which was also incorporated a request for further authorization of the suspension of specie payment.¹⁷⁴

In the interval which had elapsed since the legislature had brought about the humiliation of the state bank, the members had occasion to pay dearly for their cruel sport, for as soon as the bank had been compelled to resume, it

¹⁷¹*Reports of Session* (Senate), 1840-41, p. 14.

¹⁷²*Chicago American*, January 15, 1841.

¹⁷³*Reports of Session* (Senate), 1840-41, pp. 416 ff.

¹⁷⁴*Ibid.*

stopped cashing their salary warrants and they were compelled to dispose of them at half their value.¹⁷⁵ Consequently, as the session drew near its close, those members who had been so eager to compel a strict compliance with the law were now disposed to show mercy. Accordingly, by the act of February 27, 1841, the banks of the state were declared free to suspend until the other banks of the South and West should resume. As the *New York Evening Post* put it, "the Illinois legislature has authorized the sale of indulgences."¹⁷⁶ The act even set aside any forfeiture that might have accrued before December 5, 1840. In addition to the long list of restrictions imposed at the time of the last suspension, it was further provided that the interest on loans should be reduced one per cent, in order to accommodate the more impecunious borrowers. Until January 1, 1843, the state bank could issue one, two and three dollar notes, but, in return for this and other favors, it was forced to purchase of the state at par fifty thousand dollars' worth of six per cent bonds every six months for two years. The state treasurer was specifically instructed, however, not to use the money thus obtained for paying any of the state's indebtedness to the bank. The maximum amount for which a director, or any firm of which he was a member, could thereafter become liable, was reduced to \$5,000.¹⁷⁷

Both the state bank and the Bank of Illinois were compelled to give bonds as surety for an agreement not to pay any dividends to private stockholders during suspension, but they were both required to declare "to the full amount" the "just and proper dividends on the state's stock."¹⁷⁸ Owing to a slight difference in the wording of their respective charters, the Bank of Illinois had been paying a capital stock tax on all its paid up capital while the state bank paid only on the three-sevenths of its capital owned by individuals. The inequality was remedied in the "suspension

¹⁷⁵*Chicago American*, December 18, 1840; Ford, *History of Illinois*, 225.

¹⁷⁶Quoted by *Sangamo Journal*, April 2, 1841.

¹⁷⁷*Laws of Illinois*, 1840-41, p. 40.

¹⁷⁸*Ibid.*, p. 42.

sion act" by the imposition of a "bonus" of one-half of one per cent per annum on all the state shares of the state bank.¹⁷⁹ The legislature at the same session, authorized the auditor, treasurer and secretary of state to settle with the Bank of Illinois for generous advances made by it to the state capitol building fund and the internal improvement account. The bank was given the warrant of the auditor for the full amount, payable after 1850, with interest at six per cent.¹⁸⁰

The state bank had never been permitted to issue notes of a less denomination than five dollars, and this indulgence was granted now in the belief that the ones, twos, and threes would supply the place filled by gold and silver and thus the banks would soon be able to accumulate a sufficient amount of the displaced coins to warrant early resumption of specie payments. But instead of facilitating resumption the small notes had the opposite effect and the task of accumulating specie became more difficult than before.¹⁸¹ Instead of continuing their policy of retrenchment the officers of the state bank plunged more deeply than ever into financial difficulties. They enlarged its circulation and proceeded to erect a costly banking house, while its stock was quoted at thirty-seven cents on the dollar and the institution itself was rated in New York as utterly insolvent.¹⁸² In spite of this condition of affairs the directors voted themselves, as compensation for their services, the use of four thousand dollars each, without interest.¹⁸³ When June 1 arrived the directors purchased fifty thousand dollars' worth of state bonds as required by the suspension act, but were unable to pay any dividends on state stock.¹⁸⁴

So long as the Bank of Illinois continued under the careful management of John Marshall and his colleagues,

¹⁷⁹*Session Reports*, 1840-41, p. 186.

¹⁸⁰*Laws of Illinois*, 1840-41, p. 39.

¹⁸¹Ford, *History of Illinois*, 226.

¹⁸²*Chicago Democrat*, September 14, 1841.

¹⁸³*Sangamo Journal*, November 19, 1841.

¹⁸⁴*Ibid.*, July 23, 1841.

who had guided the bank's affairs in the old territorial days and had revived its charter in 1834, it was at least able to bear up under the crushing load which its partnership with the state had thrust upon it. Its affairs, however, were becoming badly entangled and when it paid the semi-annual dividend in July, its resources were strained to the utmost.¹⁸⁵ Although the directors had suspended specie payments whenever the other banks of the West had taken such action, they did so with impunity, for they were not liable to forfeiture of their charter. But at length the anti-Marshall faction among the stockholders, defeated in their effort to oust the officers of the bank and to place J. C. Stickney at the head of affairs, instituted quo warranto proceedings based upon the plea that the charter of the bank was unconstitutional. As was noted in an earlier part of this discussion, the court decided in favor of the bank's charter.¹⁸⁶ At the annual election of officers, January 2, 1843, Mr. Marshall declined election as president and the bank's policy was soon changed to one of getting all that was possible out of a doomed enterprise before it should go to pieces. In their effort to carry out this policy the directors even attempted to defraud the state, as will be seen in connection with the settlement of the bank's affairs.

In spite of the ever increasing evils of state banking, the Illinois Whigs continued in their loyalty and argued that all that was needed to remedy the situation was another national bank to act as a regulator of the state institutions.¹⁸⁷ The opposition of the Democrats was considered by the Whigs as disloyalty to the country's institutions. On the other hand, "the Whigs in the estimation of the Democrats were a set of bank vassals, and were frequently called by the Democrats 'the ragocracy.'" The presi-

¹⁸⁵*Sangamo Journal*, July 23, 1841.

¹⁸⁶*Ibid.*, January 21, 1841. Decision of the supreme court is found in 1 Gilm. 672.

¹⁸⁷*Ibid.*, November 12, 1841.

dents and directors of the bank were called 'rag barons,' bank paper was called 'bank rags,' and 'written' or 'printed lies.' ¹⁸⁸

Now that the state had finally abandoned the various internal improvement projects, several of the directors of the bank became interested in a proposition to take over the Northern Cross Railroad, which was the most promising of the projected lines of railway. Accordingly, they entered into an agreement to complete the line for the state and to receive payment in Illinois and Michigan Canal bonds.¹⁸⁹ These same directors with the aid of their fellows had made a rule that the bank should not expand its issue of paper during the suspension of specie payments, but now they proceeded to disregard the bank's condition and voted themselves and their business partners generous loans for building the railroad. When a beginning had been made it was easy to continue and even the state came in for an advance to piece out her insufficient revenues.¹⁹⁰ Finally in February, 1842, the directors announced that the bank had been compelled to suspend all its operations for an indefinite period. This announcement was followed by the rapid depreciation of its paper. By March 25, the notes had fallen in value from eighty-five cents to fifty,¹⁹¹ while in April they were quoted at forty-four cents.¹⁹² In May the directors discontinued the Chicago, Danville and Jacksonville branches and moved their specie to the parent bank. Instead of resumption, everything now pointed to liquidation.¹⁹³ It was confidently expected that the Bank of Illinois would be in a position to resume specie payments in June along with the other western banks, but

¹⁸⁸Ford, *History of Illinois*, 227. See, also, article from *Belleville Representative* copied in *Sangamo Journal*, February 16, 1839.

¹⁸⁹Ford, *History of Illinois*, 227.

¹⁹⁰*Ibid.*, 223.

¹⁹¹*Sangamo Journal*, March 25, 1842.

¹⁹²*Ibid.*, April 8, 1842.

¹⁹³*Ibid.*, May 13, 1842.

when the day agreed upon arrived the directors announced that they had been compelled to follow the state bank's example and had therefore ordered an indefinite cessation of the bank's activities.¹⁹⁴

During the year ending June 30, 1842, one hundred and fifty-two other banks in the United States had closed their doors and the rest had greatly reduced their circulation in preparation for the resumption of specie payments. This had led the people of the State of Illinois to rely all the more upon the issues of the Illinois banks until they too suspended operations and their paper became thoroughly discredited.¹⁹⁵ Moreover, specie to the amount of \$798,998.69 lay inaccessible in their vaults. Large amounts of their notes were being accumulated by speculators from the easily frightened countrymen.¹⁹⁶ so that by December, 1842, there was not enough money in circulation to carry on the business of the community and resort was had to payment in kind.¹⁹⁷ For the first time the governor, auditor and treasurer made use of the provision in the act of January 16, 1836, which authorized them at any time to publish a proclamation forbidding the acceptance of state bank paper in payment of public dues. Collectors were further warned not to take the notes of the Shawneetown bank at more than their current value.

At this point, which marks the close of their active existence, the writer has brought together a sufficient number of the statements made by the two banks to the legislature to indicate: (1) The general character of their operations during the whole period of their activity; and (2) the specific changes of policy that occurred from year to year. The following table shows the balance sheet of the state bank for the dates indicated:

¹⁹⁴Goodspeed, pub., *History of Gallatin, etc., Counties*, 100.

¹⁹⁵*Senate Journal*, 1842-43, p. 20.

¹⁹⁶*Ibid.*, 43.

¹⁹⁷*Ibid.*, 18, 19.

Items	September 14, 1835	January 17, 1837	July 1, 1839	November 16, 1840	December 1, 1842
Discounts	\$ 278,293.31	\$1,397,463.24	\$3,287,770.60	\$1,707,751.17	\$1,395,087.07
Bills of exchange	31,445.60	1,247,495.35	1,053,139.98	447,040.53	118,814.57
Loans	4164.00	458,828.00	499,521.50	423,854.10	210,063.70
Real estate, etc.			44,399.85	471,995.46	1,141,666.35
Incidental expenses			6,816.60	14,999.51	777.76
Branch balances	3,723.62	5,614.16	74,597.89	15,990.34	15,614.61
Illinois securities		107,304.71	270,375.00	2,101,849.59	1,703,534.50
Advances to the state			287,487.3	243,397.07	448,860.59
Due from other banks	200,300.30	308,090.56	274,283.56	707,278.16	27,312.12
Notes of other banks	20,150.00	185,575.00	243,412.00	1,29,977.00	23,170.00
Specie	243,223.16	552,702.78	692,482.54	529,040.04	491,598.22
TOTAL	705,645.88	4,293,941.45	8,938,923.25	7,555,600.92	5,758,677.80
Capital	278,739.11	1,413,360.00	3,644,955.00	3,649,125.00	3,637,500.00
Real estate fund	200,000.00	550,000.00	500,000.00	400,000.00	200,000.00
Contingent fund			76,436.79	60,000.00	60,000.00
Undivided profits	8,661.67	68,668.66	22,015.95	86,700.04	283,107.38
Circulation	178,810.00	1,429,815.00	3,058,925.00	3,105,615.00	1,151,270.00
Unclaimed dividends		4,936.50	5825.50	1,603.50	772.00
Canal commissioners		298,799.58	151,333.45	217,260.7	9,316.84
Fund commissioners			69,3703.74		
Due to other banks	5,739.62	53,095.78	446,745.42	117,893.49	5,866.04
Individual deposits	123,665.48	475,265.63	475,482.49	85,850.76	75,018.49
Other liabilities			67,736.37	300.06	4,828.14

The first statement was made just three months after the bank began business as a private institution. The items in the balance sheet reveal the sources of the funds with which the bank carried on its earlier operations as well as the character of the accommodations extended to borrowers. Subscribers to the \$1,400,000 capital stock had made payments to the amount of \$278,739.11 in "specie or its equivalent." Judging from the large amount of specie on hand payments must have been made generally through that medium or with funds readily convertible into specie. The \$209,396.30 due from other banks is almost entirely offset by the item, "real estate fund, \$200,000." The bank had recently borrowed this amount in the East for the purpose of reloaning it on real estate, and the money was still on deposit in a New York bank.¹⁹⁸ Individual deposits form a larger percentage of total liabilities than at any subsequent report. The bank had but a small supply of notes at this time on account of a delay in the shipment of the separate issues provided for each of the branches.¹⁹⁹

Since the real estate fund was not yet available, scarcely any loans had been made on real estate, the business being confined to the purchase of bills of exchange and the discounting of promissory notes.

By January, 1837, the date of the next statement given in the above table, a great change had occurred. Almost all the capital stock had been paid for and an additional sum of \$350,000 had been borrowed to re-lend on real estate security. The specie reserve had been increased 225 per cent, while the note issue had been expanded to seven times the amount outstanding in 1835. The bank as the depository for state funds had on hand \$298,799.58 of the proceeds from the sale of Illinois and Michigan Canal bonds, in addition to individual deposits of \$475,265.63. The constant drafts on the canal funds, however, made that item of little benefit to the bank. The large circulation out-

¹⁹⁸U. S., H. of R., 24 Cong., 2 Sess., Doc. no. 193, p. 603.

¹⁹⁹*Ibid.*, 615.

standing indicates that most of the loans and discounts were received in the form of the bank's notes. The year 1836 had been marked by a great demand for accommodation on the part of land speculators and the bank had expanded its loans very rapidly; in fact, but a few weeks before this statement was made it had been compelled to suspend its discount business until it could receive a shipment of \$280,000 in specie from New York and New Orleans. At this period the purchase of bills of exchange arising from sales of produce in the South and East formed a large part of the bank's business, for the reason that the bills were readily converted into specie while the ordinary loans or discounts at this period were considered as "slow" assets.²⁰⁰ The connection of the bank with the lead and pork speculation accounts for a large amount of the outstanding accommodations.²⁰¹

At the time of the next report recorded in the table, the volume of the bank's business had reached the maximum point. The individual stockholders had paid in the full amount of the first stock issue of \$1,400,000 and had to their credit \$144,655 on the second issue of one million dollars. In the meantime the state had received its \$2,100,000 in shares, making the total paid up capital \$3,644,655.00. However, instead of paying in cash for its shares, the state had turned over to the bank \$1,765,000 in bonds. The bank had also been practically compelled to buy \$700,000 worth of canal bonds and about \$300,000 worth of other state securities, in order to retain the good will of the legislature. Thus \$2,763,750.00 of the bank's resources were tied up in securities of questionable value and \$28,748.73 more had been advanced without interest in order to help make up the deficit in the current expenses of the state government.²⁰² The proceeds of a recent sale of internal improvement bonds had been deposited with

²⁰⁰*Special Report, Investigating Committee*, 1836-37, p. 40.

²⁰¹*Reports of Session* (Senate), 1839-40, pp. 266, 331, 332, *et passim*.

²⁰²*Ibid.*, p. 263.

the bank by the fund commissioners and had increased the total deposits to over a million dollars; but the deposit items were soon reduced to their normal amount and as the difficulties of the bank increased, rapidly disappeared. The circulation of the bank had more than doubled, but the reserve had increased but twenty-five per cent and was equal to but thirteen per cent of the liabilities other than capital stock. The heavy drafts made upon the bank by the state enabled it to turn to a profitable use but \$3,700,000 out of its total resources of \$8,900,000. The reckless advances made to favorites had increased the discount item to the amount of \$3,287,770.60, but almost a million dollars of this amount was pronounced worthless by Doctor Murphy of the legislative investigating committee.²⁰³

The report for November 16, 1840, shows a marked decline in the general activities of the state bank. But \$1,470 had been paid in by private stockholders, making a total of \$146,125 paid in on the million dollars stock issue to individuals. The amount loaned on real estate had been reduced and one hundred thousand dollars returned to the original holders of the fund. A surplus of \$90,000 had been accumulated for emergencies but the deposits of over a million dollars had shrunk to \$107,000. In the face of unfavorable conditions the note issue had been increased while the reserve had decreased more than twenty-three per cent. In their efforts to protect the bank from loss the bank officials were compelled to bid in at judgment sales large amounts of property which they had accepted as security for loans. As may be seen from the "real estate" item, nearly half a million dollars was tied up in this way. The items, "Illinois securities, \$2,101,899.59," and "Advances to the state, \$243,397.07," indicate what a crushing load the partnership had placed upon the bank's resources. The first amount indicates that the bank had been able to dispose of \$600,000 worth of bonds, probably at a heavy discount. The second shows the severe drain that was being

²⁰³*Reports of Session, (Senate), 1839-40, p. 263.*

made upon the bank to meet the state's current obligations, \$193,300.65 of it being for the ordinary expenses of government while the remaining \$50,096.42 represents advances for labor and material employed in the internal improvement projects.

The decrease of fifty per cent in discounts and bills of exchange purchased as well as the accumulation of large amounts in eastern banks and listed in the statement as a part of the "\$797,278.16 due from other banks" shows that the bank was preparing to resume specie payment along with the other banks of the West and South.²⁰⁴

By the time the next report was made, the bank was hopelessly insolvent. It had practically suspended all operations but the settlement of outstanding accounts. \$568,742.22 of the discounts were listed on the bank's books as "suspended debt" and much of the remaining \$826,344.85 as well as the loans on real estate later proved to be worthless. Through the foreclosure of mortgages it had come into possession of over a million dollars' worth of land, but, as will be seen, only a small part of this amount was ever realized. Some of the bonds had been sold but the state had continued to demand advances for current expenses until \$448,869.59 was due the bank. The bank had suspended its operations since February, 1842, and its supply of specie remained intact. During the preceding period of enforced resumption it had redeemed a large amount of its paper but there was still almost a million and a half outstanding. The large amount of undivided profits is due to the fact that the bank had been forbidden by the legislature to declare dividends during a suspension of specie payments. The bank continued in a dormant condition until February, 1843, when it went into liquidation under conditions which will be considered presently.

²⁰⁴*Reports of Session, 1840-1, 14.*

The following table shows the condition of the Bank of Illinois at various periods:

	Aug. 5, 1837	Dec. 1, 1838	Nov. 2, 1840	Nov. 12, 1842
Loans and discounts..	\$243,318.31	\$1,005,568.84	\$1,339,215.00	\$1,170,619.87
Bills of exchange.....	15,444.76	78,850.61	270,738.40	201,843.76
Suspended debts			28,313.41	133,869.59
Advances to fund commissioners			240,037.04	
Advances for state house			84,197.00	
Illinois securities		500,000.00	25,280.96	370,818.84
Insurance stock			1,500.00	11,200.00
Due from banks.....	41,727.93	517,121.58	308,539.63	44,853.48
Real estate	975.00	11,331.91	62,426.95	98,661.24
Incidental expenses....	29.25	28,874.95	6,566.67	6,892.05
Specie	158,610.34	306,708.05	413,255.38	307,040.47
Notes of other banks	45,450.00	82,772.00	63,147.00	2,605.00
Other assets.....				11,982.22
TOTAL		2,531,227.54	2,843,217.44	2,360,386.02
Capital		1,288,400.00	1,342,740.00	1,349,240.00
Circulation	64,846.00	712,204.00	1,262,414.00	757,848.00
United States de- posits	39,795.90	40.00	40.00	40.00
Unclaimed dividend....		404.00	707.44	1,908.00
Individual deposits.....	121,238.80	74,998.60	90,552.30	88,634.69
Due to banks.....		108,665.62	31,211.41	11,684.15
Branch balances			15,533.35	
Undivided profits		32,029.53	32,838.97	24,092.89
Surplus fund		4,489.52	67,179.97	126,938.29

The statement for August 5, 1837, shows the condition of the bank shortly before its transformation from a private into a quasi-state institution and its consequent entanglement in the state's disordered finances. The bank at that time enjoyed an excellent reputation and its balance sheet shows that its creditors were well protected.²⁰⁵ As special depositary for the receipts of the land office at Shawneetown it was subjected to the supervision of the secretary of the treasury. As has been indicated in another

²⁰⁵*Senate Journal*, 1836-37, p. 352; U. S., *Letter of the Secy. of the Treas. on State Banks*, 1838, pp. 778-83.

connection, the bank as a private institution performed a useful service in southeastern Illinois, confining its accommodations to lending on local real estate, discounting commercial paper and purchasing bills of exchange from commission men who had sold grain and live stock "down the river."²⁰⁶

Before the next report listed in the above table appeared, the state had subscribed for a million dollars' worth of the bank's stock, paying \$100,000 in cash and the rest in bonds. At the time of the report, December 1, 1838, the bank had disposed of \$400,000 worth of the bonds.²⁰⁷ It will be seen that the partnership with the state brought about a radical change in the bank's condition. The federal government had withdrawn its deposits with the exception of the nominal sum of forty dollars. The deposits of individuals had decreased forty per cent but the fund commissioners had placed in the bank proceeds from the sale of bonds to the amount of \$309,996.27. Under the new regime individual deposits ceased to play an important part in the bank's affairs while the deposits made by various state officials never remained in the bank's keeping for any length of time. The large amount (\$517,121.58) due from banks may be accounted for by the fact that the bank was now the fiscal agent of the state and was concerned in the transfer of funds for the prosecution of the internal improvement enterprises. The bank no longer confined its operations to southeastern Illinois, but with its branches in several important business centers its activities covered a large part of the state. In this way the great increase in the volume of loans, discounts and bills of exchange, as well as the greatly expanded note issue, may be explained.

The report of November 2, 1840, almost two years later, shows an increased volume of business, but in reality the bank was in a much weaker condition. \$28,313.41 of its assets were already listed as suspended debt and, as afterwards developed, a large part of the loans and discounts

²⁰⁶Page 82.

²⁰⁷Ford, *History of Illinois*, 190.

were uncollectible. Officials in charge of the construction of the new capitol building had obtained advances of \$84,197 without interest, while similar favors had been granted to the fund commissioners for the prosecution of internal improvements. The Bank of Illinois had been more fortunate than the state bank in that it had been able to dispose of all but \$25,280.96 of its state bonds. The large increase in the "real estate" item is probably due to the erection of a banking house at Shawneetown at a cost, when completed, of \$80,000.²⁰⁸ The bank had suspended specie payments in October, 1839, and had thus been able to maintain its specie reserve pending resumption by all the western banks in January, 1841.²⁰⁹ Meanwhile, the outstanding circulation had increased steadily until it was now greater by seventy-five per cent than in 1838. The comparatively large amount of undivided profits represents the earnings which had accumulated since the semi-annual dividend of three per cent in June. It will be noted that during the preceding two years a considerable sum had been set aside by the directors as a surplus.

In June, 1842, as has been noted, the Bank of Illinois suspended operations and soon after the date of the last report in the table went into liquidation. Comparatively little change had occurred in the status of loans and discounts save that an increased amount had been charged under "suspended debts." The \$370,818.34 listed under "Illinois securities" represents the scrip given to the bank by the state in payment of the advances noted in the report for 1840. The \$11,982.22 listed in the table as other assets represents the balances of the various branches. The bank had withdrawn a considerable amount of its paper from circulation and had increased its surplus to \$126,938.29 but, as will be seen, its loans and discounts proved to be entirely undependable when the final settlement was made.

In the gubernatorial campaign of 1842 former Governor Duncan became the candidate of the Whigs against

²⁰⁸Goodspeed, pub., *History of Gallatin, etc., Counties*, 100.

²⁰⁹*Sangamo Journal*, December 10, 1840; *Lives of Illinois*, 1839-40, p. 15.

Judge Ford of the supreme court. The Democrats stigmatized Mr. Duncan as a British bank Whig and he in turn cited his various acts while governor as consistently hostile to the banks.²¹⁰ The majority in both parties was in favor of putting the banks into liquidation, but a few still clung to the hope that the banks would soon resume their operations. Judge Ford, the Democratic candidate, took the stand that a compromise should be made by which the state and the banks would dissolve partnership, leaving them to settle up their own affairs and go out of business.²¹¹ In spite of the presence of a substantial element of radical anti-bank Democrats in his party, Judge Ford was elected. The sympathies of Mr. Carlin, the retiring governor, were with the more radical wing of his party but, out of deference to Mr. Ford, he agreed to omit from his farewell message the paragraphs recommending summary treatment of the banks.²¹² In the meantime, however, he succumbed to the influence of the anti-bank element and, much to Mr. Ford's surprise, recommended to the legislature prompt repeal of the banks' charters.²¹³ He gave as his reason for urging such action that the banks deserved no further respite, for they had utterly failed to accomplish the purpose for which they were created. He felt that the time had come when the freedom of the individual citizen should be asserted against the domination of vested interests. In his inaugural message, Governor Ford presented the possible avenues of escape from the existing bank situation and the consequences attached to each of them. The first was to allow the banks to make an effort at resumption; the second, to wind them up abruptly and withdraw their notes; the third, to effect a compromise by which the state bonds held by the banks would be exchanged for the state's stock in the banks, dollar for dollar. He argued that the first plan would be feasible in the case of a small neighborhood institution, but wholly impracticable in the case of banks

²¹⁰*Sangamo Journal*, May 13, 1842.

²¹¹Ford, *History of Illinois*, 293; *Alton Telegraph*, April 1, 1843.

²¹²Ford, *History of Illinois*, 298.

²¹³*Senate Journal*, 1842-43, p. 21.

with a circulation of four and a half millions scattered over the whole United States. In opposition to the second, and in support of the third, plan he argued that if the state's three millions in stock of suspended banks were thrown upon the market very little could be realized and the value of the shares of individuals would be practically wiped out.²¹⁴

Mr. Ford was opposed in the legislature by the radical wing of his party under the leadership of Secretary of State Trumbull. In fact, Mr. Trumbull became so active in his opposition to a compromise with the banks that the governor removed him from office.²¹⁵ In spite of the anti-bank faction, however, a joint resolution was passed recommending the dissolution of the connection between the state and the banks, and authorizing the governor, auditor and fund commissioner to find out upon what basis a settlement could be had.²¹⁶ These officers entered into negotiations with the banks and in a short time submitted the following report from the state bank: The state was indebted to the bank to the extent of \$2,152,404.09,²¹⁷ while the bank was liable to the state for \$2,100,000 invested in shares of stock. The directors were willing to settle with the state by exchanging the bonds and other evidences of state indebtedness for stock, dollar for dollar. The relationship between the two would thus be dissolved and the bank would be allowed to continue as a private institution with only a nominal amount of state shares to use as a defense against attacks on its constitutionality.²¹⁸ This plan was embodied

²¹⁴*Senate Journal*, 1842-43, pp. 36 ff.

²¹⁵*Independent Democrat* (Springfield), March 20, 1843; Gerhard, *Illinois as it is*, 103.

²¹⁶*Laws of Illinois*, 1842-43, p. 321.

²¹⁷This amount was made up as follows:

Bonds	\$1,686,000.00
Scrip	17,534.50
Advances for current expenses.....	292,373.17
Advances to fund commissioners.....	156,496.42

\$2,152,404.09

²¹⁸*Reports of Session* (Senate), 1842-43, p. 94.

in a bill drawn up by Governor Ford and presented by Mr. McClernand, chairman of the House committee on finance. In his speech, which was later published in pamphlet form, Mr. McClernand showed in an able manner the unquestionable wisdom of a complete divorce between the state and the banks. He estimated that the state had already paid out \$360,000 interest on the bonds used in buying bank stock and had received in dividends but \$207,500. If she continued this relationship, at the present outlook she would be called upon to meet the interest but with the prospect of no dividends whatever.²¹⁹ The bill was passed by a vote of 107 to 4 and sent to the senate, where the opposition tried to kill it with amendments, but it was passed without serious difficulty and received the approval of the council of revision.

The act required the state bank to go into liquidation at once and within thirty days to pay all its specie over its counters, except fifteen thousand dollars, to depositors and holders of notes. The officers of the bank were first to ascertain the ratio which the supply of specie on hand bore to the amount of notes and deposits and no person was to receive more than that proportion of his claim in specie. For the balance, he was to be given certificates good for payment of debts to the bank and for the purchase of bank land sold on execution. Four years were allowed for the complete settlement of affairs and at the end of each year a distribution of specie was to occur until all notes and certificates were redeemed. Debtors, however, were to be allowed to pay their obligations in five instalments. The act created the office of state bank commissioner, whose duties were as follows: (1) superintend the transactions of the bank officers; (2) act as a state director; (3) obtain information (by administering oaths, if necessary), and stop all questionable practices with court injunction, if needed. The bank was given only three days in which to accept or reject the provisions of the law. If it accepted,

²¹⁹Speech of J. A. McClernand: *On Bill to Divorce Banks of Illinois from State.*

it must deliver to the governor evidences of state indebtedness to the amount of \$2,050,000 and receive from him a like amount of its stock.²²⁰ The state directors were then required to resign in favor of the state bank commissioner, and if any differences should thereafter arise between the state and the private directors the matter must be left to arbitration.²²¹ All the branches were to be closed at once and all the bank's property appraised and sold at public auction.²²²

The terms of the act were promptly approved by the directors, who delivered to the governor \$1,786,000 in bonds and \$287,501.51 in auditor's warrants, thereby reducing the state debt by \$2,073,501.51.²²³ When the governor and the general assembly gathered in front of the state house and made a bonfire of the bonds, the spirit of repudiation was destroyed with them and the general feeling prevailed that the state was on the road to recovery from the effects of six years of folly.²²⁴ The legislature then proceeded to enact several minor laws relating to the banks, chief among which was the act of February 23, which provided that no note issued by an Illinois bank should be received for public dues and that holders of auditors' warrants should cease to receive interest.²²⁵ The act of February 25 authorized the treasurer to pay out all Illinois bank notes in his possession at their current value, which at that time was less than fifty cents on the dollar.²²⁶

Governor Ford appointed N. H. Purple state bank commissioner and he assumed his duties, January 31. In his examination of the bank's books he found that \$476,-

²²⁰This left a nominal state holding of \$50,000 in the bank.

²²¹This method was resorted to on August 14, 1845, in order to settle a claim held by the bank against the state. The arbitrators awarded the bank \$85,380.45. *Reports of Session* (H. of R.), 1846-47, p. 20.

²²²*Laws of Illinois*, 1842-43, pp. 21 ff.

²²³Greene and Thompson, *Governors' Letter-Books*, ii, 51-53.

²²⁴February 9, 1843. *Senate Journal*, 1844-45, p. 10; Greene and Thompson, *Governors' Letter-Books*, ii, 54.

²²⁵*Laws of Illinois*, 1842-43, p. 231.

²²⁶*Ibid.*, 231.

772.53 in specie was available for paying noteholders and depositors. Of this amount, he authorized the cashier to pay \$8,432 on a judgment and \$15,000 was placed on reserve according to the terms of the liquidation act. The remaining \$453,349.53 was distributed among the depositors and noteholders as their first dividend. By the time Mr. Purple made his first report, December 2, 1844, the bank had reduced the outstanding circulation from \$1,430,308 to \$229,901.00 and its total liabilities other than capital stock to \$870,000. In his judgment, the assets would be sufficient to meet this obligation, but he offered no encouragement to the holders of the more than \$1,500,000 worth of capital stock.²²⁷

In his message to the legislature, which met in December, 1844, Governor Ford commented on the great improvement that had taken place. The depreciated notes of the banks had been withdrawn from circulation and specie and the paper of specie paying banks had succeeded them. A period of economy had followed the reckless extravagance and accumulation of indebtedness which characterized the whole internal improvement era. Mr. Ford granted that banks were necessary to a community with well established business interests, but he was convinced from almost thirty years of observation that Illinois succeeded better without them. He cited the three successive failures in conducting banks in the state as proof of his assertion and added that so long as debtors were so indifferent about meeting their obligations a bank was impossible.²²⁸

During the year 1845 some progress toward a final settlement was made by the state bank, but its assets were shrinking at an alarming rate. The expense account due to salaries, taxes, fees and court costs left little for the creditor. In his report for 1846 the commissioner listed under available assets: bills and notes receivable, \$432,856.35, suspended debts \$460,098.21, loans \$50,218.23, real estate (nearly all of it pledged by bank debtors) \$1,009,-

²²⁷*Reports of Session* (H. of R.), 1844-45, p. 123.

²²⁸*Senate Journal*, 1844-45, p. 10.

522.86, which, with \$11,193.21 in coin, made a total of \$1,020,716.07. On the other hand, the liabilities other than capital amounted to \$663,073.62, so that if every dollar of the assets could be realized there would be left for the holders of \$1,544,655 worth of stock but \$357,642.45, not to mention the fact that they had not received a dividend in several years.²²⁹ The editor of the *Alton Telegraph*, in commenting upon the situation, condemns the state for causing what he considers an entirely unmerited loss to the private stockholders. In proof of his assertion he cites the fact that the private holders of shares were compelled to pay for them with specie while for the greater part of the state's stock there was placed in the bank at their face value an issue of bonds worth but twenty cents on the dollar. He calculated that if the state had paid the same proportion of specie as had been exacted from individuals the bank could reimburse its shareholders to the extent of seventy-eight cents on the dollar instead of twenty-six, the former figures comparing favorably with the terms of settlement of any western bank.²³⁰

Governor Ford may be pardoned for mildly boasting in his farewell message in 1846 of the improvement in conditions since his inauguration in 1842. At the earlier date the state had become indebted for bank stock and internal improvements to the extent of over fourteen millions. The books of the treasurer showed a deficit of more than \$313,000 current expenses. The warrants of the auditor were received at fifty cents on the dollar and the state's credit had fallen into so great disrepute that the postmaster at Springfield refused to deliver any mail to the state house unless some one became personally liable for the postage. The "credit" habit had taken such a hold on the people that the liquidation of debts, both public and private, seemed hopeless. By 1846 the annual shortage for

²²⁹*Reports of Session* (H. of R.), 1846-47, p. 25.

²³⁰*Alton Telegraph*, July 4, 1846. The final outcome was that the stockholders received nothing at all. *Reports of Session* (Senate), 1859, p. 831.

current expenses amounted to but \$20,000. The warrants of the auditor were received nearly at par in spite of the fact that they no longer bore interest. The period of reckless banking had come to an end and a dependable currency had come in to take the place of depreciated notes. The state debt had been reduced by three millions and provision had been made to pay five millions more as soon as the canal should be completed. The general situation all over the country had improved, as was evidenced by the lively demand for land on the part of newly arrived settlers.²³¹

The feeling against banks was too universal to warrant a candidate for governor running on a pro-bank platform. Although the more intelligent citizens realized the need of adequate banking facilities, the politicians in both parties were eager to clear themselves of any responsibility for the events of the last ten years and announced their opposition to the incorporation of any more banks. Aside from a word of commendation for the bank policy of the Ford administration, Governor French in his inaugural address had little to say on the subject.²³² As the date set for the end of the state bank's existence (March 4, 1847) approached, Mr. French found that institution far from ready to wind up its affairs. The officers of the bank had collected nearly a million dollars, which was about all that the general condition of its debtors seemed to permit. For this reason only, the House committee on banks recommended that an extension of time be granted, but that in so doing care should be exercised "to leave no spark of vitality in the bank or its charter."²³³ This was seized upon by the advocates of the bank, however, as the psychological moment for securing the revival of the state bank, and they presented a bill to recharter that institution for five years. A surprisingly large minority was found to be in favor of

²³¹*Senate Journal*, 1846-47, pp. 8 ff.

²³²*Ibid.*, pp. 15 ff.

²³³*Reports of Session* (H. of R.), 1846-47, p. 276.

the measure,²³⁴ but it was compelled to give way to the act of March 1, 1847, which extended the life of the bank until November 1, 1848, for the sole purpose of settling its affairs. It provided that if by that time the affairs of the bank were still unsettled the governor should appoint three trustees to wind up its business. The legislature was determined to discourage any undue procrastination on the part of the directors and incorporated several provisions calculated to stimulate a speedy settlement: (1) It was provided that the certificates given to note holders and depositors should draw six per cent interest until paid; (2) All accounts due the bank ceased to draw interest from the date of passage of the act; (3) Any creditor was thereafter at liberty to attach any of the bank's real estate and obtain judgment by forced sale; (4) The local assessors were commanded to tax all bank property within their jurisdiction, whereas before it had been exempted and a capital stock tax paid into the state treasury.²³⁵

When the first of November, 1848, arrived, the affairs of the bank were far from settlement, so the governor appointed N. H. Ridgely, the cashier, Uri Manly and John Calhoun trustees to settle its affairs. Thereupon the directors resigned and assigned all the remaining assets to the trustees.²³⁶ In their report to the governor in 1851, the trustees stated that the assets of the bank would not meet its liabilities and that the stock was utterly worthless. During their tenure of office they had collected only \$36,666.85 with which to pay obligations, other than capital stock, to the extent of \$454,190.96. The book value of the real estate and the suspended debts due the bank was \$1,444,000, but only a small part of this amount could ever be realized.²³⁷ Mr. Ridgely shortly afterwards offered to Governor French \$50,000 in state bonds in settlement of the stock still held by the state. Governor French refused

²³⁴*Chicago Democrat*, February 23, 1847.

²³⁵*Laws of Illinois*, 1846-47, p. 20.

²³⁶*Bankers Magazine*, iii, 382.

²³⁷*Reports of Session* (Senate), 1851, pp. 137, 138.

to take the bonds until he heard that a Cincinnati creditor of the bank was about to seize them. He then accepted them, with the approval of the legislature, and the state's connection with the bank was brought to an end.²³⁸

The settlement of the bank's affairs continued to drag along year after year until in 1857 Governor Bissell attempted to remove Messrs. Ridgely, Manly and Calhoun, and appointed three new trustees. The old board, however, refused to give up the property in their hands and Mr. Bissell instituted *quo warranto* proceedings to oust them. The court decided that with the surrender of the \$50,000 of state stock the bank ceased to be subject to the state's jurisdiction and that the removal of the trustees was possible only by judicial proceedings begun by a stockholder. Governor Bissell was determined nevertheless that the state should interfere in the conduct of the bank's affairs and secured the appointment of a committee of the legislature to inquire into the affairs of the trustees. They found that Mr. Manly had ceased to take an active interest in the bank's business and that Mr. Calhoun had moved to Kansas. These gentlemen, however, continued to draw the annual stipend of \$1,000, but they each remitted \$250 of this amount to Mr. Ridgely for doing all the work.²³⁹ Mr. Ridgely, when called to the stand, scored the committee for intruding into the affairs of a private institution, but gave them a fund of information about the progress that had been made and the reasons for delay in settlement.

The liabilities still outstanding in 1859—sixteen years after the bank had gone into liquidation—amounted to \$150,000, while the more than \$1,500,000 invested in capital stock was a total loss to the investors. The assets amounted to fifteen or twenty thousand dollars in cash and "some old debts due for fifteen or twenty years and practically worthless." The trustees had held office for eleven years, but had been able to declare but one dividend of sixteen and two-thirds per cent to the note holders and depositors.

²³⁸*Reports of Session*, 1859, p. 841. *Senate Journal*, 1852, p. 13.

²³⁹*Reports of Session* (H. of R.), 1859, p. 838.

Asked as to the trustees' plan for a final settlement, Mr. Ridgely replied that they purposed to advertise all the assets, chiefly land, for sale, but most of the land was very undesirable or had a faulty title. Arrangements for such a sale had all been completed when a Mr. Corwyth, the holder of a large amount of outstanding certificates, attached forty or fifty thousand dollars' worth of land in the lead region and the sale had to be postponed. Mr. Ridgely's explanation of the poor showing made by the trustees was that property had been accepted years ago at ten times its value and the notes of persons afterwards hopelessly insolvent had been freely discounted. One of the most interesting episodes in the lengthy examination occurred when the witness was questioned about the personal relations of the trustees with the bank:

Mr. Mack: "You are reaching a low point in the available assets of this bank and yet there is a constant and continuous drain upon these assets of at least three thousand dollars a year, to pay for the services of trustees when one man could discharge the duties just as well as three."

Witness (Mr. Ridgely): "There is no question of that. Then again, I suppose that the creditors and individual stockholders would rather have one trustee than three but the legislature thought otherwise."

Mr. Mack: "But suppose that the legislature should alter or repeal that law?"

Witness: "I don't think that they could touch it. . . . If we are under the supervision of the courts the legislature has no control over us."

Mr. Mack: "Mr. Calhoun (who had moved out of the state) could resign but you cannot remove him without application to a court of chancery . . . and up to the time the court removes him he continues to draw \$1,000 a year?"

Witness: "He never has drawn but \$750 a year. The arrangement was that I should do all the work and take half the pay (\$1,500)."²⁴⁰

The closing sale of the bank's real estate and chattels was held in November, 1862, when auctions were held at

²⁴⁰*Reports of Session* (11. of R.), 1850, p. 838.

Mineral Point, Wisconsin, and Springfield.²⁴¹ Upon the death of Mr. Ridgely, the trusteeship of the state bank was handed over to Mr. William Ridgely, his son, who has been called upon a number of times to help clear the title of property in which the bank had an interest at some time.²⁴²

The history of the settlement of the affairs of the Bank of Illinois at Shawneetown is somewhat similar to that of the state bank. At the time when a committee of state officers (1842) had inquired upon what terms the directors of the Bank of Illinois would settle they replied that they would buy the state's stock and pay for it with bonds; but instead of being compelled to go into liquidation they insisted upon continuing as a private institution.²⁴³ The legislature was determined that the bank should end its existence and yet could not make any alterations in the original charter without the bank's consent. In order to induce the directors to accept a plan for a compromise with the state similar to the one made with the state bank, and yet compel them to go into liquidation, two laws were passed. One, very stringent in its terms, provided for the immediate assignment of all the bank's assets to three commissioners who were to be clothed with extraordinary powers.²⁴⁴ The other was much more mild and provided for an equitable settlement with the state and the liquidation of the bank's affairs under the direction of its own officials.²⁴⁵ The scheme of the legislature succeeded and the bank committed itself to an agreement to turn over to the governor \$500,000 in evidences of state indebtedness at once, and the remaining \$500,000 within a year with interest at six per cent. The state was to retain three directors until the full amount was received. The governor accepted the first payment and surrendered a like amount of capital stock held by the state. The directors then pro-

²⁴¹*Bankers Magazine*, xvii, 476.

²⁴²An example of this is the site of the Auditorium Hotel and Theater in Chicago. Knox, *History of Banking in the United States*, 722.

²⁴³*Reports of Session*, 1842-43, p. 201.

²⁴⁴*Laws of Illinois*, 1842-43, p. 27.

²⁴⁵*Ibid.*, 30.

ceeded to wind up the bank's business under about the same provisions as had been laid down for the state bank.

The Bank of Illinois, as has been noted, had recently changed hands and was now controlled by a group of men who intended to make the most of their opportunity. Just before the passage of the liquidation act they borrowed \$100,000 of the bank's specie and spent it in buying state bonds for a few cents on the dollar. Among the bargains obtained was one from Macalister and Stebbins who had advanced \$261,500 to the state and were still holding \$804,000 as security. Although the title to these bonds was still vested in the state, the firm did not hesitate to dispose of \$333,000 worth of them to the Shawneetown bankers. These men now repaid their \$100,000 loan to the bank with bonds, reaping a profit of more than seventy cents on the dollar. But they did not stop at this point for they owed other large amounts which they now settled with bonds. When the time came for making a final settlement with the state, these Macalister and Stebbins bonds were tendered to Governor Ford at their face value. When the governor refused to accept them the directors sought to compel their acceptance by an order of the court but the judge refused to issue a mandamus against a co-ordinate branch of the government.²⁴⁶

When Governor Ford found that Macalister and Stebbins were unable to make a settlement with the state and that the Shawneetown bank shares held by the state were daily becoming more worthless, he received the disputed bonds subject to the consent of the legislature. For a time that body refused to give its sanction but later agreed to accept the bonds at forty-eight cents on the dollar, leaving a balance of \$295,000 still due from the bank.²⁴⁷ In December, 1844, after nearly two years devoted to settling the bank's affairs, the state commissioner reported that the cashier by paying \$166,885.50 in specie to creditors

²⁴⁶Greene and Thompson, *Governors' Letter-Books*, ii, 106, 107.

²⁴⁷*Ibid.*, 120; *Laws of Illinois*, 1844-45, p. 246.

and by matching debits against credits through the medium of the notes and certificates, had settled more than a third of the obligations other than capital stock. He estimated that from a half to three-fourths of the assets were good.²⁴⁸ The legislature decided, however, to abolish the office of commissioner and authorized the bank to place its property in the hands of four assignees. As fast as any evidences of state indebtedness came into the bank's hands, they were to be turned over to the state in payment of the \$295,000 still due it in the exchange of bonds for stock. If after four years the amount was not paid in full, the state's claims were to be preferred over that of the stockholders to the extent of \$20,000 if necessary. If, however, at the time of the final settlement there still remained a balance due the state, the assets were to be divided between the state and the private stockholders in proportion to the amount of their respective stock holdings at that time.²⁴⁹ The assignees found that the four years time allotted to them were entirely inadequate for the performance of their task so the legislature advanced the date of final settlement to January 1, 1851.²⁵⁰ After that date the assignees were given the power to sue in their own names; the assets and liabilities arising at Shawneetown and Lawrenceville were accepted by Messrs. Caldwell and Ryan and those at Jacksonville, Alton and Pekin by Messrs. Dunlap and Smith. The assignees had not only never paid the state any part of the \$295,000 still due but had allowed interest on it to accumulate to the extent of \$62,000.²⁵¹ In 1852 the State Bank of Missouri united with several other creditors in bringing a chancery suit in the federal courts against the Bank of Illinois and its assignees. The court ordered the assignees to turn over the bank's affairs to three receivers who were instructed to settle up the business as speedily as possible. The legis-

²⁴⁸*Reports of Session* (H. of R.), 1844-45, p. 163.

²⁴⁹*Laws of Illinois*, 1844-45, p. 246.

²⁵⁰*Ibid.*, 38.

²⁵¹*Reports of Session* (Senate), 1849, p. 104.

lature ratified this action by an act recognizing the receivers as the legal successors of the Bank of Illinois.²⁵² Only one of the receivers qualified for the office and in 1853 he proceeded to sell at public auction the remaining effects of the bank. The handsome four story building erected at a cost of \$80,000 was bought by Governor Matteson for \$15,000 and other property was disposed of at similar sacrifices.²⁵³ The claims of the note holders and depositors seem to have been settled in a fairly satisfactory way but after the state had been reimbursed and the receivers' fees and court costs paid there was nothing left for the 14,884 private stockholders.²⁵⁴

But little attention was paid by the press or the legislature to the Bank of Cairo which was opened at Kaskaskia by a group of investors who had obtained possession of its unused territorial charter. As late as 1839 the bank bore a good reputation and furnished a considerable portion of the medium of exchange in south-western Illinois.²⁵⁵ A large portion of its stock was held by Wright and Company, London bankers, as agents for various owners, hence the policy of the bank could be dictated by the holders of their proxies.²⁵⁶ The directors suspended specie payment with the other western banks but on account of their limited clientage their action did not attract wide attention.²⁵⁷ In 1840 the Bank of Cairo was declared to be serving the interests of its locality better than the other Illinois banks were doing in their respective territories. It furnished about seventy per cent of the small notes in circulation in the region tributary to St. Louis, and thus supplied the demand for change much more easily than its larger rivals who depended upon gold and silver or the notes of other banks for amounts less than five dollars. The directors made a specialty of the small notes, for the fact that they

²⁵²*Laws of Illinois*, 1851, p. 120.

²⁵³Goodspeed, pub., *History of Gallatin, etc., Counties*, 100.

²⁵⁴*Chicago Democrat* (weekly), September 10, 1853.

²⁵⁵*Sangamo Journal*, December 24, 1839.

²⁵⁶*Chicago American*, January 15, 1841.

²⁵⁷Greene and Thompson, *Governors' Letter-Books*, ii, 60, 61.

were always in demand kept them from being presented for redemption.²⁵⁸ In reply to the charge of a St. Louis paper to the effect that the bank was not solvent, the cashier published a statement in September, 1840, of the resources and liabilities. At that time a circulation of \$200,138.00 and deposits of about \$13,000 constituted the only liabilities in addition to the capital and surplus of \$295,000. To offset these items there was specie to the amount of \$112,451.70, eastern exchange to the extent of \$10,096.85 and loans and discounts to the amount of about \$350,000. Of this last item more than \$250,000 was created by the purchase of bills of exchange arising from the shipment of produce down the Mississippi.²⁵⁹ The bank later became heavily involved in the operations of the Cairo City and Canal Company, a corporation engaged in constructing levees and other public works at Cairo, and its standing began to be questioned.²⁶⁰ The result was that the notes had depreciated five or ten per cent before those of the other Illinois banks had begun to suffer a discount.²⁶¹ A year later, the affairs of the bank were in so hopeless a condition that its paper was refused by brokers.²⁶² In February, 1843, the directors went into bankruptcy and assigned all the bank's property, thereby virtually surrendering their charter.²⁶³ Thereupon the legislature by the act of March 4, 1843, formally repealed the act of incorporation and provided a plan for the speedy settlement of the bank's affairs.²⁶⁴ Governor Ford and the legislature were criticized for the immediate repeal of the charter of the Cairo bank when the other banks were allowed such liberal terms of settlement. In his reply to these criticisms, the governor justified the more severe treatment of the Bank of Cairo by the fact that it had expanded its discounts

²⁵⁸*Chicago American*, September 18, 1840.

²⁵⁹*Ibid.*

²⁶⁰*Ibid.*, January 15 and 21, 1841.

²⁶¹*Ibid.*, July 2, 1841.

²⁶²*Chicago Democrat* (weekly), June 8, 1842.

²⁶³*Ibid.*, March 21, 1843.

²⁶⁴*Laws of Illinois*, 1842-43, p. 36.

beyond all hope of redeeming the consequent issue of notes, that it had operated under a charter of very doubtful legality and that the directors had already virtually surrendered the charter when they assigned their office and placed the bank in the hands of receivers.²⁶⁵ It was at first believed that with the specie in the vaults and the money obtained from the sale of the Cairo Canal Company's property the notes of the bank could be redeemed at par²⁶⁶ but the late cashier of the bank disappeared with the whole supply of specie. Some years later, enough was realized from the remaining assets to redeem the notes at five cents on the dollar.²⁶⁷

A history of the banking operations during the period of internal improvements would not be complete without some discussion of the more or less illegal banking operations that were carried on in Chicago.²⁶⁸ Up to 1835 there was little demand for banking facilities in Chicago. Gordon S. Hubbard, a local merchant, kept a bank account at Buffalo and supplied the other traders with drafts on the East. As has already been noted, however, the population and commercial importance of the village were increasing at so rapid a rate that the directors of the state bank located a branch in that place.²⁶⁹ The paper of the branch bank furnished but a small part of the circulating medium, however, for Chicago was rapidly becoming the commercial center of the whole Northwest; hence the bills of Wisconsin, Michigan and Indiana banks mingled freely with those of the Illinois banks and helped to drive out what little specie there was. For small change the merchants issued tickets "good for groceries," "good for tobacco," "good for a drink," etc., according to whatever business the person issuing the notes followed.²⁷⁰ The legislature of 1835-36,

²⁶⁵Greene and Thompson, *Governors' Letter-Books*, ii, 60, 61.

²⁶⁶*Chicago Democrat* (weekly), March 21, 1843.

²⁶⁷*Illinois State Journal*, February 2, 1862.

²⁶⁸This subject is treated at great length by Andreas in his *History of Chicago*.

²⁶⁹Morris, *History of the First National Bank of Chicago*, 26.

²⁷⁰Andreas, *History of Chicago*, i, 531.

in addition to chartering banks, had incorporated the Chicago Marine and Fire Insurance Company with a capital of \$100,000. After granting to the company the usual powers possessed by a concern of that character the privilege of receiving deposits and lending money was added but the issue of paper "in the similitude of bank notes" was strictly forbidden.²⁷¹ In May, 1837, the directors of the company announced that during the "deranged condition" attendant upon the panic of 1837 they would make loans and receive deposits. Depositors were given certificates redeemable in specie on demand which, although they bore no physical resemblance to bank notes, circulated freely at par. When the company finally went into voluntary liquidation its notes were redeemed and retired without the slightest loss or friction.²⁷²

In the meantime, Mr. George Smith of Aberdeen, Scotland, visited Chicago and was so impressed with the prospects of the city and the surrounding country that upon his return to his native land he induced his friends to unite with him in forming the Scottish Illinois Land and Investment Company. They bought and sold Illinois real estate, obtaining large returns until the panic of 1837 brought business to a standstill. Smith hastened to America to look after his interests and during his sojourn in Chicago was so impressed with the success of the Chicago Marine and Fire Insurance Company's operations that he decided to conduct a similar enterprise. Accordingly he obtained from the territorial legislature of Wisconsin the charter of the Wisconsin Marine and Fire Insurance Company with a capital of \$225,000, all of which was taken by Smith and a small group of fellow countrymen. The head office was nominally in Milwaukee, but Mr. Smith carried on the greater part of his operations in Chicago.²⁷³ In spite of the fact that the issue of certificates of deposit designed to circulate as money was forbidden by its charter, the company issued them freely, but maintained such high

²⁷¹*Laws of Illinois*, 1835-36, p. 30.

²⁷²*Chicago American*, May 16, 1837; *Bankers' Magazine*, xvi, 234.

²⁷³*Chicago Democrat* (weekly), January 29, 1846.

business standards that its paper was in universal demand and furnished a most acceptable addition to the medium of exchange. So great were the quick assets of the firm that the whole circulation could be taken up on short notice, hence it was never found necessary to suspend specie payment.²⁷⁴ Beginning with the modest sum of \$34,028 in 1841, the issue of certificates increased until in 1851 the total outstanding circulation amounted to \$1,470,000 and numerous agencies had been established to facilitate redemption.²⁷⁵ In addition the business men of the territory tributary to Chicago were provided with eastern funds at one to two per cent.²⁷⁶ The success of the enterprise aroused the opposition of the banks of the surrounding states and territories and in 1852 the legislature of Wisconsin was persuaded to force the company to retire its circulation.²⁷⁷ Meanwhile Smith had organized banks in Washington, D. C., and Atlanta, Georgia, and was issuing and redeeming their paper in the Northwest. When Illinois adopted the free banking law, which is to be discussed in another place, Smith incorporated the Bank of America under the Illinois law but its circulation was never very extensive. By 1857, having acquired a large fortune without a suspicion of crooked dealing attached to it he retired to his native land.²⁷⁸

For many years unincorporated firms in Chicago and elsewhere in the state had carried on a profitable banking business, but they were not permitted under the constitution of 1818 to incorporate as banks or to issue notes, hence they were usually classed as brokers. In conclusion, it may be said that as a whole the record made by the private banking institutions of this period, notwithstanding the illegality of the note issues of some of them, is very much more creditable than that made by the elaborately safeguarded state institutions.

²⁷⁴*Chicago American*, September 28, 1841.

²⁷⁵Andreas, *History of Chicago*, i, 532.

²⁷⁶Baldwin, *History of La Salle County*, 184.

²⁷⁷*Chicago Democrat* (daily), February 9, 1852.

²⁷⁸Knox, *History of Banking*, 726, 742.

CHAPTER V

THE FREE BANKING SYSTEM OF ILLINOIS

In commenting upon the situation which existed in Illinois just after the collapse of the banks in 1842 a writer of the time remarks: "All the banks¹ of Illinois have ceased to be. Their history is brief; their story is instructive; and the lesson taught will long be remembered."² This statement could have been applied with equal force to a number of southern and western states whose banks had failed under similar circumstances. In fact, the state bank of Indiana was the only conspicuous success among the projects undertaken or fostered by a state.³ For nine years after the failure of the Illinois banks, the Indiana bank currency furnished that part of the circulating medium which was considered both sound and lawful. A considerable amount of paper from other states, especially Michigan, was of unquestionable legality but of very doubtful soundness; while the issues of the Wisconsin Marine and Fire Insurance Company and other similar institutions made up in soundness what they lacked in legality.⁴

The presence of such an assortment of money of all degrees of goodness made it necessary for persons handling it in business houses to be supplied with "bank note reporters," "counterfeit detectors" and other similar publications, while the general public relied upon the money tables published in the newspapers.⁵

In so far as the banking functions other than note issue were concerned, they were performed by the private banking firms which had sprung up in all the principal

¹This refers to the regularly incorporated banks of issue. There were a number of private banking firms in the state.

²Brown, *History of Illinois*, 428.

³White, *Money and Banking*, 333.

⁴*Chicago Democrat*, January 15, 1845; *Bankers' Magazine*, iii, 724.

⁵*Niles Register*, lxviii, 272.

towns. These establishments were subject to no supervision by the state and whenever the absence of competitors permitted it, charged exorbitant rates of interest—the customary rate paid by a central Illinois cattle grower, for example, being twenty-four per cent.⁶ Those portions of the state adjacent to Chicago, St. Louis or Vincennes were more fortunate, however, and secured accommodations at reasonable rates, but at best the situation in the state was satisfactory neither to the bankers nor the public. Deposit banking was practiced by an inconsequential minority, hence the private bankers, under the necessity of paying out currency to borrowers, either violated the law by issuing their own paper or confined themselves to lending the notes of other banks, while the public was subjected to a constant risk in using a conglomeration of bank bills of uncertain value. In the campaign of 1846 two radically different remedies, both involving changes in the state constitution, were proposed by the two political parties. The Whigs favored the adoption of a general banking law under which banks of issue could be chartered which would provide the people of the state with a plentiful supply of safe currency. The Democrats, on the other hand, contended that in view of the unhappy experiences of the past both banks and bank paper should be forever banished from the state. They argued that the ideal monetary situation, namely, the exclusive use of specie, could never be brought about so long as paper money was allowed to circulate.⁷ In his campaign speeches, Mr. Killpatrick, the Whig candidate for governor, took the position that it was a great injustice to the business of the state that Illinois should be the only state in the Union without banks of issue. He pointed out to the voters the economic ills growing out of the use of foreign bank notes, the chief of which was that the people of Illinois were bearing the loss attendant upon the use of such paper without receiving accommodation at the banks which issued it. As for the establishment of an exclusive specie system of money, Mr. Killpatrick argued

⁶Prince and Burnham, *History of McLean County*, ii, 760.

⁷*Alton Telegraph*, January 24, 1846.

that no law ever enacted could prevent the circulation of bank notes to the exclusion of specie.⁸ The Democrats nominated Augustus C. French, an anti-bank man, on a platform which declared that the "resuscitation or recharter of any of the old banks . . . would be disastrous to the best interests of the people of Illinois" and that "the creation of any new bank in Illinois, either as a state bank or in any other form is uncalled for by the people."⁹

The Democratic party throughout the campaign took advantage of the popular prejudice against all corporations. The average Illinoisian looked upon the act of incorporation as a mere "loophole for knavery" which permitted the incorporators to do under its protection things which they could not do as private individuals. He believed that the incorporation of a bank of issue enabled the incorporators without money or credit of their own to reap a fortune from the resources of their patrons.¹⁰ Mr. French and a Democratic legislature were chosen at the November election and all hope of a general banking act seemed to have disappeared. A new field of operation, however, was soon opened for the friends of banks. The state had long outgrown the old constitution of 1818, but none of the efforts to provide a new one had thus far met with success. At length the proposition to hold a constitutional convention passed the legislature, was submitted to the people and received the support of the voters of both parties. The convention was in the hands of the Democrats, "nineteen-twentieths"¹¹ of whom were supposed to be opposed to all banks, and yet a pro-bank Democrat was made president of the convention and every effort to force the adoption of constitutional prohibition of banks met with defeat.¹²

⁸*Alton Telegraph*, July 4, 1846.

⁹*Chicago Democrat*, March 10, 1846.

¹⁰*Chicago Democrat*, October 28, 1845.

¹¹*Illinois State Register*, quoted by *Illinois State Journal*, November 9, 1857.

¹²*Alton Telegraph*, June 29, and July 9, 1847; *Niles' Register*, lxxii, 307; *Chicago Democrat*, June 29, 1847; *Jacksonville Prairie Argus*, quoted by *Alton Telegraph*, July 16, 1847.

The constitution was completed on the last day of August, 1847, and the following March was submitted to the people and adopted by a large majority. The following sections relating to banking were included in the article dealing with corporations:¹²

"No state bank shall hereafter be created, nor shall the state own or be liable for any stock in any corporation or joint stock association for banking purposes, to be hereafter created.

"The stockholders in every corporation, or joint stock association for banking purposes, issuing bank notes, or any kind of paper credits to circulate as money, shall be individually responsible,¹⁴ to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind.

"No act of the general assembly, authorizing corporations or associations with banking powers,¹⁵ shall go into effect, or in manner be in force unless the same shall be submitted to the people at the general election next succeeding the passage of the same and be approved by a majority of all the votes cast at such election for and against such law.¹⁶

The Democratic party still refused to commit itself in favor of a banking law and at its convention in 1848 re-nominated Governor French on a platform which did "renewedly declare" the party's opposition to all banks and advocated the expulsion of paper money from the state.¹⁷

¹²Article X, Sections 3, 4 and 5; see *Journal of Constitutional Convention*, 1847, p. 564.

¹⁴To all the creditors of the bank. Decision of the supreme court of Illinois in *McCarthy vs. Lavasche*. 89 *Illinois*, 270.

¹⁵The supreme court of Illinois in the case of *Anthony vs. Intern. Bank* (93 *Illinois*, 225) and also in *People vs. Lowenthal* (93 *Illinois*, 191) held that "banking powers" meant full banking powers and that an act of incorporation granting all the usual powers of a bank except that of note issue was not a banking act and need not be submitted to the voters.

¹⁶In the case of *Smith vs. Ryan* (34 *Illinois*, 364) it was held that minor amendments to a banking law already approved by the people need not be submitted.

¹⁷*Illinois State Journal*, May 4, 1858.

The Whigs still looked to a central bank as the true remedy for the currency ills of the nation, but as a measure of expediency they were willing to adopt any sound system of local banks so long as there was no prospect of securing a third United States Bank.

Governor French was re-elected and when the first legislature chosen under the new constitution assembled, January 1, 1848, he announced his intention of using his newly acquired veto power, if necessary, to prevent the adoption of a general banking act.¹⁸ Such action on his part did not become necessary, for the only bill introduced met an untimely end in the lower house.¹⁹

Now that the constitution permitted the chartering of banks, the business men of the state began a determined fight to secure favorable action from the next legislature. Just before the opening of the next session of that body, a convention was held in Chicago at which the representatives of the leading commercial and financial interests of the state drafted a memorial to the legislature and the governor urging them to abandon their attitude of hostility to banks and to provide the state with a system of banking adequate to its needs.⁴⁰ This time the appeal met with success as far as the legislature was concerned and a general banking system was passed for submission to the voters at the next general election.

The act was patterned after the free banking system of New York and provided that the auditor of public accounts should obtain a supply of circulating notes to be issued to persons complying with its provisions. Each of these notes was to be signed and numbered by the auditor and the number entered upon an official register. Any person or persons who desired to engage in the issue of notes was required to deposit with the auditor bonds issued (1) by the United States, (2) by any state which paid full interest or (3) by the state of Illinois. The deposit of the

¹⁸*Senate Journal*, 1849, pp. 11 ff.

¹⁹*House Journal*, 1849, pp. 58, 73.

²⁰Harper and Ravell, *Fifty Years of Banking in Chicago*, 83.

first two classes of bonds entitled the owner to receive from the auditor circulating notes to the full market value of the bonds but not to exceed their par value; but Illinois securities must be listed at twenty per cent less than their average market value in New York during the preceding six weeks. If any state failed to pay regularly six per cent interest on its bonds, the auditor was required to demand at least two dollars of its bonds for every dollar in notes issued to the depositor. The securities were all listed in triplicate, each list being signed by the auditor and the depositors of the bonds. One of the lists was kept in the state treasurer's office, one was retained by the auditor and the third was given to the person making the deposit.²¹

The privilege of forming a banking association was open to any number of persons but a minimum of fifty thousand dollars' worth of capital stock must be sold before beginning business. The certificate of incorporation granted to such associations specified the corporate name, place of business, amount of capital stock, the names and residence of stockholders and the number of shares held by each. This certificate entitled the holders to discount bills and notes, receive deposits, buy gold and silver coin and bills of exchange, lend money on real estate and personal security, and circulate their notes as money.²² If, however, a banking association failed to redeem its notes on demand, the auditor was required after giving notice for ten days in two New York City newspapers, to sell enough of the bonds deposited by the association to enable him to redeem the notes out of the proceeds of the sale, but in no case could the state of Illinois be held liable for the redemption of a bank's paper.²³ If any note holder chose to do so, he could cause a bank to be put into liquidation because of its failure to redeem its paper. The procedure prescribed was as follows: The note was to be "protested" by a notary public and the protest sent to the auditor who in turn was

²¹*Laws of Illinois*, 1851, p. 163, Sections 2 and 3.

²²*Ibid.*, Sections 4 and 9.

²³*Ibid.*, Section 14.

to notify the officers of the bank to pay the obligation in question at once. If they failed to do so, the auditor was to insert a notice in one Springfield paper and one paper in the place where the bank was located, to the effect that he would redeem and retire all the notes of the bank. The association was then to cease doing business except for the purpose of settling its affairs under the direction of a receiver appointed by the courts. All assets were to be applied (1) to the redemption of notes, (2) to the payment of all liabilities other than capital stock and (3) to reimburse the shareholders.²⁴ The stockholders were all to be held individually responsible for the debts of the bank to an amount equal to their respective holdings and the courts were authorized to issue execution against each stockholder in succession until the full amount of the judgment was obtained.²⁵ Any note upon which payment had been refused drew interest at the rate of twelve and one-half per cent until paid.²⁶ Notes were redeemable only at the place of business mentioned in the charter, and sufficient specie must be kept on hand for their redemption.²⁷ If the auditor or a group of shareholders whose holdings aggregated three thousand dollars desired an investigation of a bank's affairs, the circuit judge of the county in which the bank was located was required to institute such an investigation and to publish his findings together with his opinion as to the wisdom and honesty of the bank's management.²⁸

The general supervision of the new system was placed in the hands of three bank commissioners whose duties consisted in examining the affairs of every incorporated bank at least once a year and in inspecting the bonds on deposit with the auditor. In case there was a shrinkage in the value of any securities to such an extent that they no longer furnished adequate protection to the note holder, the bank was required to deposit additional bonds or withdraw a

²⁴*Laws of Illinois*, 1851, pp. 163 ff., Sections 14 and 18.

²⁵*Ibid.*, Section 28.

²⁶*Ibid.*, Section 18.

²⁷*Ibid.*, Section 19.

²⁸*Ibid.*, Section 25.

portion of its notes from circulation. As an additional safeguard, a quarterly statement was required from every incorporated bank, a copy of which must be published in a local newspaper.²⁹

Although the current rate of interest was ten per cent, the legislature restricted the banks to a rate of seven per cent, thereby compelling them to evade the law in order to secure the current rate.³⁰

The bill was sent to Governor French who returned it with a vigorous veto message in which he noted the following objections to the measure: (1) The bill should have provided that a definite minimum amount of gold and silver be kept on hand for the redemption of notes. (2) Instead of a mere double liability provision the measure should have required that every stockholder be liable to the full amount of his private property. (3) A bond was a mere evidence of indebtedness itself and was not a proper basis for the creation of further evidences of indebtedness. If a bond were worth its face value in gold then why not permit the banks to deposit the gold itself as security for their notes instead of resorting to a roundabout method which amounted to the same thing? On the other hand if the bonds were not as good as gold, then they did not provide adequate security for the notes. (4) A bank could incorporate under the provisions of this bill and instead of issuing notes based upon securities could act as the agent for some foreign "wild cat" enterprise. (5) The New York system upon which the Illinois banking law was modeled could not be pronounced a success since it had not yet been called upon to weather a severe crisis.³¹

The same influences, however, which had forced the original passage of the act again prevailed and it was re-passed over the governor's veto.³² It was now necessary that the measure should receive the approval of the voters at a general election before it could become effective. The

²⁹*Laws of Illinois*, 1851, pp. 103 ff., Section 34.

³⁰*Ibid.*, Section 38.

³¹*Reports of Session* (H. of R.), 1851, p. 403.

³²*Chicago Daily Democrat*, February 22, 1851.

next general election would have occurred in November, 1852, but the legislature deprived all the county treasurers of their offices and provided that their successors should be elected in 1851. This change in the law made it possible to submit the measure a year earlier.³³ In spite of the light vote and the hostility of the Democratic newspapers, the law was adopted by a substantial majority.³⁴

Although the system provided was an improvement over the chaotic conditions of the past, there was ample room for abuses to creep in and the experience of subsequent years shows that unscrupulous persons made the most of these defects in the law. Banks could issue an unlimited amount of currency without reference to the needs of the community so long as the requisite amount of securities was deposited with the auditor. The place of issue named on the notes could be located in the most inaccessible portion of the state and the notes circulated as far as possible from it. Finally, there was no provision made for the actual payment of a dollar of the fifty thousand dollars' worth of capital stock prescribed as a minimum.

Notwithstanding the ease with which bonds could be obtained and circulating notes received there was not a single application filed with the auditor for several months after the passage of the act, a fact which led the editor of the *Chicago Democrat*, an opponent of the system, to boast that the law would soon become a dead letter.³⁵ The auditor had signified his willingness to issue bank notes to the full value of any six per cent bonds of the United States or the states of New York, Ohio, Kentucky and Virginia, none of which was quoted at less than 106 on the New York stock market. He also offered to receive Illinois securities at eighty per cent of their market price.³⁶ It was the stringency of these bond deposit provisions of the act

³³*Laws of Illinois*, 1851, p. 144.

³⁴*Memoirs of Gustave Koerner*, i, 564.

³⁵*Chicago Daily Democrat*, January 28, 1852.

³⁶*Thompson's Bank Note Reporter*, quoted in the *Chicago Tribune*, February 13, 1852.

which discouraged the formation of banking associations by even those bankers who had favored the passage of the general law.³⁷

During the course of the year 1852, however, seventeen banks were organized in various parts of the state and deposited bonds with a market value of \$1,649,100, in return for which they were permitted to receive \$1,142,544.83 in notes. Of this amount, \$1,129,622 was actually in circulation at the close of the year.³⁸ In the case of several of the new associations the business of a private firm was taken over and the lawful bank notes substituted for illegal issues.³⁹ On the other hand, some of the private bankers were so audacious as to issue "shin plasters" with which to buy bonds for the purpose of obtaining lawful currency from the auditor. In fact, several Chicago institutions after becoming incorporated are said to have prepared an issue of illegal notes exactly like their legal issue and to have paid out the two kinds indiscriminately.⁴⁰

The law abiding bankers were determined to rid the state of illegal currency, but met with little success in their efforts to discredit such universally acceptable paper as that of George Smith. Moreover, the law compelled them to redeem their notes at par while Smith continued to charge a one per cent premium for gold. Consequently, Smith's paper continued to circulate without interruption while the notes of the incorporated banks were constantly presented for redemption. At length the incorporated banking associations appealed to the courts (December, 1852) and secured indictments against six banks and George Smith's firm, the Wisconsin Marine and Fire Insurance Company.⁴¹ The cases dragged through the courts and were eventually abandoned but the efforts of the banking associations in another quarter were more successful.

³⁷Bross, *History of Chicago*, 42.

³⁸*Biennial Report of the Auditor of Public Accounts*, 1853, p. 24.

³⁹Andreas, *History of Chicago*, i, 534.

⁴⁰*Chicago Democrat*, May 2, 1852, September 3, 1852.

⁴¹*Ibid.*, December 25, 1852. This effort to stamp out illegal note issue was known as "the bank war."

When the legislature met in 1853 pressure was brought to bear both by the stock bankers and the auditor to secure an amendment to the banking act which would protect legitimate note issues.⁴² At the same time, however, Governor French in his farewell message pronounced the law a failure in that instead of ridding the state of "wild cat" currency it seemed to foster a spirit of law breaking. He did not, however, urge the repeal of the act, but recommended that the defects in the system be corrected.⁴³ In his inaugural address Governor Matteson joined with the auditor and the stock bankers in asking for legislation which would give the banking associations who tried to obey the law adequate protection against unauthorized note issues.⁴⁴

The legislature fell short of correcting all the defects in the original bank law, but the supplementary act of 1853 was passed which afforded some relief to legitimate banking. The following are the principal provisions of the act: No certificate of incorporation could be issued until at least \$50,000 in bonds had actually been placed in the auditor's hands and if the amount of deposit should fall below \$50,000 the bank *ipso facto* forfeited its charter. A heavy penalty was provided for the issue within the state of anything designed to pass as money, other than the bills authorized by the general banking law. Foreign notes were not allowed to be circulated unless they were of a denomination of five dollars or more and were issued by a regularly authorized specie paying bank of a state, territory or Canadian province.⁴⁵ The last named portion of the act was not taken seriously, although proceedings were instituted against offenders in various parts of the state. The high premium on silver coins after 1834 made it necessary to have a large amount of small bills to take their place and merchants and bankers continued to make use of foreign small notes in spite of the heavy penalty in-

⁴²*Reports of Session* (Senate), 1853, p. 33.

⁴³*Senate Journal*, 1853, p. 14.

⁴⁴*Reports of Session* (Senate), 1853, p. 23.

⁴⁵*Laws of Illinois*, 1853, p. 38.

volved. Moreover, when a note holder turned a small note from another state over to a bank for collection he was compelled to submit to a charge for this service so that most persons continued to use the notes and run the risk of prosecution.⁴⁶

As a result of the co-operation of the Board of Brokers of New York City with similar organizations in St. Louis and Chicago the provision of the act of 1853 against unauthorized domestic note issues was very effectively enforced. The Wisconsin Marine and Fire Insurance Company and similar institutions gave up the fight and withdrew their notes from circulation.⁴⁷ The currency of the stock banks came into more general use and for a brief time enjoyed a good reputation both at home and on Wall Street, where it was accepted at a discount of but three-fourths of one per cent.⁴⁸

At the time of the bank commissioners' report for May, 1854, thirty-one banks had been organized, with an authorized capital of seventeen millions and securities in the auditor's hands valued at \$2,650,987.62. Of this amount, \$1,844,500 worth consisted of the bonds of Virginia, Georgia, Missouri, Ohio, Wisconsin, Kentucky and Tennessee, all of which states paid six per cent interest regularly. On these bonds, notes were issued up to the full par value. The remainder of the deposits was made up of California bonds quoted at eighty cents on the dollar, on which the auditor issued notes at the rate of fifty cents on the dollar, and of Illinois securities of various kinds and values, on which notes were issued to the extent of eighty per cent of the New York stock market quotation. As far as evidences of state indebtedness could be considered a sufficient security for bank note circulation the issues of the Illinois banks seemed to be amply protected. In fact, with the rapid im-

⁴⁶*Chicago Democrat* (weekly), August 6, 1853; *Bankers Magazine*, ix, 102.

⁴⁷*Ibid.*, vii, 846.

⁴⁸*Thompson's Bank Note Reporter*, quoted by *Chicago Democrat* (weekly), April 2, 1853; *Clark's Counterfeit Detector*, quoted by *Bankers Magazine*, vii, 846; *New York Herald*, cited in *ibid.*, 739.

provement in the credit of the state there was no longer any reason for the discrimination against Illinois securities.

In lieu of the regular tax assessments the stock banks were assessed by the bank commissioners upon loans, discounts and bond deposits. When the commissioners called upon the banks for a statement as to the amount of these items, but nine of the banks made any return at all upon loans and discounts, the rest reporting merely the minimum of fifty thousand dollars in bonds required for incorporation. This singular state of affairs was due to the fact that the latter banks as such were not doing a loan and discount business at all. They were incorporated in order to secure the right to issue notes and then loaned the entire issue as private brokers and not as banking associations. In this way the seven per cent maximum interest rate could be exceeded and the tax upon loans and discounts evaded. In fact, a sort of an endless chain could be started by first obtaining bonds, next, procuring notes with them, next, obtaining more bonds with the notes, and so on as long as the association's ability to keep its notes in circulation permitted the process to continue. That this practice, however, did not as yet prevail to any considerable degree is evidenced by the fact that but few of the banks had deposited more than the minimum amount of securities.⁴⁹

The commissioners reported that the notes of foreign banks continued to furnish almost seventy per cent of the entire volume of paper in circulation in Illinois, in spite of the increased issues of the stock banks. This situation they accounted for in two ways: (1) Some Illinois bankers had put their paper into circulation outside of the state in order to postpone the necessity of redeeming it; (2) The amount of notes which the stock banks found it profitable to issue fell far short of the total demand for money.⁵⁰

Notwithstanding the ease with which a banking association could be formed, the efficient supervision of the aud-

⁴⁹Report of Bank Commissioners, in *Bankers Magazine*, ix, 102 ff.

⁵⁰*Ibid.*

itor in connection with the character of securities offered limited the number of applications for charters and inspired public confidence in the system. During the summer of 1854, however, the stock banks received their first shock, which was caused by a panic of short duration but characterized as the worst since 1837. The trouble was precipitated by a too heavy drain upon the money market due to extensive railroad construction in the Middle West. The crisis spread to the stock market, with the result that Virginia and Missouri bonds, which formed the larger part of the securities deposited by the Illinois banks, fell to ninety-five and ninety-three cents on the dollar, respectively. Suddenly a feeling of distrust seized the holders of Illinois currency and as a result large amounts of it were presented for redemption. The banks were wholly unprepared to meet their obligations and a number were compelled to suspend specie payments.⁵¹ The bank commissioners sought to allay the feeling against the stock bank notes by assuring the note holders that every bill was amply secured and that no one need sustain any loss. The process of waiting for the auditor to dispose of securities in New York and then call in the bills for redemption was too severe a tax upon the patience and comprehension of many persons, who disposed of their notes to brokers at a heavy discount.⁵²

In their report for January, 1855, the bank commissioners indicated to the legislature the necessity of eliminating at least two weak points in the general banking law: (1) The abolition of the seven per cent maximum interest rate, so that the banks would be induced to carry on their business in a regular and legal manner; (2) The requirement that a definite minimum amount of specie be kept on hand for purposes of note redemption.⁵³ The legislature, however, made but one slight change in the banking law of 1851 and that had to do with facilitating the retirement of the

⁵¹*Bankers Magazine*, ix, 403.

⁵²*Ibid.*

⁵³Report of Bank Commissioners, in *Bankers Magazine*, ix, 751.

notes of banks in liquidation. Any association which was about to retire its notes and wind up its affairs was required to certify this fact to the auditor. It was then entitled to receive from him a proper proportion of its securities in return for every \$1000 package of notes forwarded to him. If the association desired to go out of business before all its notes were redeemed it must deposit with the auditor sufficient specie to cover all the outstanding issue.⁵⁴

The auditor's report for the biennium ending November 30, 1854, showed that the banks had made a fairly good recovery from the effects of the panic. Three of them had closed their doors permanently, while five of the remaining thirty-two institutions were still in a state of suspension but had not yet been forced into liquidation. The total circulation then outstanding amounted to \$2,649,341, as security for which there were on deposit state bonds valued at \$3,170,529.55.

The five banks which had not yet resumed specie payments were notified that if they did not do so within sixteen days after the passage of the supplementary act of 1855 their portion of the securities on deposit would be sold by the auditor and their notes redeemed at his office. They were unable to comply with the notice and were compelled to close their doors.⁵⁵

The number of banks and the amount of notes outstanding continued to increase until in 1856 there was a total of \$6,480,873 outstanding, an increase of fifty per cent over 1854.⁵⁶ In spite of this fact, the Illinois stock bank notes formed the minor part of the circulating medium of the state. As an illustration of the varied character of the money in use in Illinois in 1855-56, Andreas cites the case of a conductor on the Chicago, Burlington and Quincy Railroad who on collecting \$203 from his passengers received the notes of twenty-three different banks. Of this amount, all but \$21 was the issue of banks outside of

⁵⁴*Laws of Illinois*, 1855, p. 32.

⁵⁵*Bankers Magazine*, ix, 822.

⁵⁶*Reports of Session (Senate)*, 1857, p. 139.

Illinois, \$115, or more than half, being the notes of Georgia banks.⁵⁷

The predominance of Georgia paper was not a mere accident, but was due to the fact that several banks in that state were owned by citizens of Chicago. After the passage of the act of 1853, and the successful campaign against illegal note issue, George Smith had opened two banks in Georgia for the sole purpose of furnishing notes for circulation in the territory tributary to Chicago, unhampered by bond deposit restrictions.⁵⁸ In like manner Preston and Company of Chicago issued from their office in that city the notes of their bank at Dalton, Georgia. Both the Smith and the Preston notes were in great demand, being convertible into eastern exchange at three-fourths of one per cent and into gold at one per cent upon being presented at the Chicago offices of the banks.⁵⁹ The stock bankers of Chicago did all in their power to drive the Georgia banks out of existence. At one time they kept up a continuous run for four months and presented a total of two million dollars for redemption. On another occasion Elihu B. Washburne was sent to Georgia with a large quantity of notes, for the purpose of driving the Smith banks out of business, but they succeeded in redeeming the whole amount presented.⁶⁰ Unfortunately there was much paper issued in the South which was not so easily redeemable. The fact that the Smith paper bore so good a reputation encouraged the issue of "wild cat" imitations of it. The business men of Chicago, being the worst sufferers from the notes, united in an appeal to the banks to stop handling Georgia paper of all kinds. Some of the banks agreed to co-operate in the matter but the rest were too heavily involved in one way or another to admit of their doing likewise.⁶¹ By 1858, however, the business of issuing and

⁵⁷Andreas, *History of Chicago*, i, 547.

⁵⁸Andreas gives a detailed account of George Smith's various activities; see i, 547, ii, 617 *et passim*.

⁵⁹*Chicago Daily Democratic Press*, January 6, 1856.

⁶⁰Andreas, *History of Chicago*, ii, 617.

⁶¹*Ibid.*, i, 546; *Bankers Magazine*, ix, 572.

lending notes had ceased to yield the large returns of former days and Smith retired his large Georgia issues and returned to Scotland.

Agencies similar to those maintained in Chicago were maintained by several Nebraska banks in Galesburg, Peoria, Macomb and other cities and villages, the difference being that the western currency was wholly unreliable. A favorite scheme of these frontier institutions was to persuade a number of persons in Illinois to take stock in the enterprise and thereby obtain the right to a certain amount of its bank notes. These notes the stockholder could use as he saw fit, but he became personally liable for their redemption. For a time the various stockholders, by agreeing to circulate one another's notes, succeeded in keeping them in circulation, but the crisis of 1857 put an end to "Brownville," "Platte Valley," "Nehama Valley" and other similar "wild cat" issues and left a number of hitherto prosperous Illinois farmers and merchants the wiser and poorer for the experience they had had.⁶²

In his report for November 30, 1856, the auditor stated that since the passage of the amendment of 1855 requiring banks to file notice of their intention to retire from business, nine banks had taken such action. Three of them had done so of their own free will and had retired their notes, or deposited with the auditor sufficient specie for their redemption. The rest had been forced to go out of business for failing to redeem their notes. The \$6,500,000 in outstanding notes was secured by bonds with a par value of \$7,645,590.24 and an estimated cash value of \$6,663,389. The system had been in operation for five years and up to that time the bonds in the auditor's possession had proved to be more than adequate for the redemption of the outstanding notes.⁶³ However, the new governor, Mr. Bissell, did not believe that this showing was any criterion as to the future of the stock banks. He granted that thus far the

⁶²Gale and Gale, *History of Knox County*, 678; Clarke, *History of McDonough County*, 161; Rice, *History of Peoria County*, i, 448.

⁶³*Reports of Session* (Senate), 1857, p. 50.

system had come up to all reasonable expectations but he expressed the fear lest in time of great financial distress, the holders of notes would suffer a heavy loss.⁶⁴

More than two-thirds of the notes of the Illinois banks were secured by Missouri state bonds and the fact that that state was suffering from an internal improvement mania similar to the one which seized the State of Illinois about twenty years before caused considerable alarm. The public debt of Missouri already exceeded nineteen millions and the legislature was contemplating an additional bond issue of several millions, an act which would inevitably bring about a marked decline in the value of the securities already outstanding.⁶⁵ Moreover, in addition to this threatened danger to the stock banking system, several of the influences which led to the commercial disasters of the year 1857 and 1858 were already in evidence. By February, 1857, five of the downstate banks were in so precarious a condition from over-expansion of loans and discounts that Chicago and St. Louis brokers flatly refused to accept their notes. A period of prosperity and expansion of business activities had led to excessive issues of notes and too little scrutiny of the security offered by borrowers.⁶⁶ Nearly all the stock banks hastened to retire a part of their note issue in order to fortify themselves against the approaching storm. As a result of their action, the outstanding circulation was reduced from \$6,480,000 on January 1, to \$5,500,000 on March 24, 1857.⁶⁷

The legislature, then in session, corrected some more of the defects in the banking law by enacting the amendment of February 14, 1857. It was specified that every incorporated banking house must do business solely in the name of the bank and at the place named on its notes and in the certificate of organization. The practice of locating banks in inaccessible spots was forbidden by a clause requiring that the office of a bank must be situated in a

⁶⁴*Reports of Session* (Senate), 1857, p. 20.

⁶⁵*Illinois State Journal*, January 19, 20, 1857.

⁶⁶*Bankers Magazine*, xi, 622, 827.

⁶⁷*Illinois State Journal*, March 25, 1857.

settlement containing not less than two hundred persons. This provision was aimed at such institutions as the Bank of Southern Illinois which had been established at Bolton, a town containing but one family and located in an out of the way part of Williamson County. Banks of this kind issued their notes in more populous parts of the state with the assurance that few persons would ever take the pains to present them at the bank for redemption.⁶⁸ The act also definitely prohibited the practice of "wearing out" persons presenting notes for redemption. Some banks in order to discourage the return of their notes in any considerable quantity compelled the note holder to present his bills one at a time and received payment in small change. Thereafter, if a person presenting a note for redemption were accorded such treatment, he could have the notes "protested" by a notary and mail it to the auditor who was required to place the bank in liquidation if it refused to make full payment to the noteholder within ten days. The practice of starting a stock bank by merely borrowing the requisite amount of securities and paying for them with the notes received in exchange for them was brought to an end by a provision that no more charters were to be granted until the auditor had been convinced that there had been paid into the bank a bona fide cash capital of fifty thousand dollars. As an encouragement to legitimate banking the legal rate of interest that might be charged by stock banks was increased from seven to ten per cent. Finally, the amendment put the bonds of Illinois and those of other states which paid six per cent interest regularly upon the same footing. Thereafter notes would be issued up to ninety per cent of the actual market value of any stock placed on deposit. This provision, while it increased materially the margin of security behind the notes of banks depositing the bonds of other states, at the same time removed the unreasonable discrimination which had existed against the securities of Illinois.⁶⁹

⁶⁸*Cairo Gazette*, quoted in *Illinois State Journal*, December 24, 1857.

⁶⁹*Laws of Illinois*, 1857, p. 23.

At the same session of the legislature an act was passed for the purpose of facilitating the settlement of affairs of defunct banks. Thereafter, if the note holders and other creditors of an insolvent bank did not present their claims within three years the bank was released from further obligation.⁷⁰

Salutary as the amendments to the banking law were, they were of no avail in warding off the panic which spread westward in the spring and summer of 1857. The period of six years during which the stock banking system had been in operation had been one of remarkable development for the State of Illinois. Taxable wealth had increased almost three fold; a number of important railways had been constructed, money was plentiful and land values were highly inflated. The reaction had now set in in earnest and the Chicago bankers tried to prevent a collapse of the banking system by agreeing to receive the notes of Illinois banks at par even though during the period from September, 1857, to March, 1858, the price of eastern exchange in terms of Illinois paper was never less than two per cent. In fact, in October, 1857, it reached a maximum of ten per cent.⁷¹

As the situation in the New York stock market became more acute, state bonds began to decline with such rapidity that the Illinois auditor was compelled on May 8, 1857, to call upon practically every bank for additional securities amounting to from two to six per cent of their capital.⁷² On July 5, the bank commissioners announced that there was no need for alarm since the notes in circulation amounting to \$5,535,690 were secured by over six million dollars worth of bonds, and all but two of the banks had complied with the request for more securities. One of the two delinquents, the People's Bank of Carmi, had \$127,500 worth of bonds with which to redeem \$110,300, but the note holders of the Stock Security Bank of Danville were not so fortunate, its securities having depreciated so

⁷⁰*Laws of Illinois*, 1857, p. 220.

⁷¹*Chicago Tribune*, January 1, 1861.

⁷²*Illinois State Journal*, May 9, June 25, 1857; *Reports of Session*, 1850, p. 193.

rapidly that the holders of its notes received but eighty-eight and a fourth cents on the dollar. This was the first instance in the history of the stock bank system of Illinois where the proceeds from the sale of bonds on deposit had not been adequate to reimburse the holders of notes, dollar for dollar.⁷³

The value of securities continuing to decline, the commissioners called upon twenty-seven banks for still further bond deposits to be made within the next ninety days. This action evoked a vigorous protest on the part of bankers and merchants and pressure was brought to bear upon the commission to secure an extension of time, but the members by a vote of two to one decided to adhere to the terms of the original bill. At the expiration of the ninety day period, all but three of the banks had reduced their circulation within the legal limit or had deposited a sufficient amount of additional securities. The bonds of the three delinquent institutions were promptly sold and a sufficient amount of specie obtained for them to enable the auditor to redeem the outstanding notes in full.⁷⁴ Had the rest of the banks failed to readjust their bond deposits or circulation, the auditor would have been compelled to dump upon the market at a most inopportune time over four and a half millions in securities, \$2,738,000 worth of which was issued by the State of Missouri whose credit was now almost ruined. In addition to voting extravagant loans the Missouri legislature now threatened to adjourn without providing for the interest payment on the enormous state debt, a proceeding which would have sealed the doom of the Illinois banking system. Fortunately, the threat was not carried out and Missouri bonds, for the time being, ceased their rapid decline in value.⁷⁵

Meanwhile the merchants of St. Louis became alarmed at the frequent and extensive demands made upon the Illinois banks for additional securities and voted to reject all the Illinois currency offered at their counters. Since a large part of the state was tributary to that city the

⁷³*Reports of Session*, 1859, p. 193; *Bankers Magazine*, xii, 239.

⁷⁴*Reports of Session*, 1857, p. 193.

⁷⁵*State Journal*, October 12, 1857; November 19, 1857.

effect of such action was quite as serious as if it had been taken by a group of Illinois merchants. One of the bank commissioners hastened to St. Louis and explained to a gathering of business men the character of the Illinois system and the exact condition of the banks at that time. This action, together with the influence of the more conservative newspapers of St. Louis brought a restoration of confidence and in a few days the paper of Illinois banks was again accepted by the merchants and bankers of that city.⁷⁶ The latter agreed to furnish specie for Illinois currency at the rate of ninety to ninety-five cents on the dollar. During the few days when Illinois paper was discredited, St. Louis "note shavers" reaped a harvest by buying up the notes from the public at from ten to fifteen per cent discount.⁷⁷

By January 1, 1858, the Illinois banks had made a fairly complete recovery from the crisis. Only a small number of them had been compelled to go into liquidation, although the failures in other lines of business, especially in Chicago, had been very extensive. In that city business was for a time completely paralyzed, speculators were ruined and the progress of the city retarded for two years. The rest of the state had not been so seriously affected by the crisis, there being but 199 failures out of 11,459 business enterprises, whereas in Chicago 117 out of 1,350 establishments had failed.⁷⁸ By April, 1858, eastern exchange could be had for one and one-half per cent premium and the protesting of Illinois currency had fallen off materially. Everything pointed to a rapid return to normal conditions.⁷⁹

Unfortunately the adverse weather conditions of the summer of 1858 left the Illinois farmer with a short grain crop of most inferior quality.⁸⁰ As a result there ensued

⁷⁶*St. Louis Democrat*, quoted by *Illinois State Journal*, October 21, 1857.

⁷⁷*St. Louis Intelligencer*, October 23, 1857, quoted by *ibid.* *St. Louis Democrat*, November 2, 1857, quoted by *ibid.* *Illinois State Journal*, October 21, November 9, 1857.

⁷⁸*Bankers Magazine*, xii, 681.

⁷⁹*Illinois State Journal*, April 27, 1858.

⁸⁰*Chicago Tribune*, January 1, 1861.

a depression in the down state portion of Illinois more severe than that of the year before. The banks, however, were doing business on a much more conservative basis and were not seriously affected; in fact, after two years of hard times, only six of the fifty-four banks had gone out of existence. All these institutions, with the exception of the Danville bank, had redeemed their notes without loss to the holders.⁸¹

In the report of the secretary of the treasury of the United States on the state of the finances for the year ending June 30, 1860,⁸² Illinois was at the bottom of the list of states in the amount of specie held by her banks in proportion to outstanding circulation. The \$269,585 reported by Illinois banks amounted to but 4.25 per cent of their note issue, whereas the average for the entire country was 23.08 per cent. In reviewing the banking situation as judged by the data in the secretary's report, Mr. W. M. Gouge said of Illinois:⁸³ "In that state, debt is piled upon debt. Funded debt forms the capital of banks and floating debt the currency. . . . A traveler relates that the redemption of notes with specie is little more than nominal. But the people having confidence in their 'ultimate security' as founded on state stock pass them freely."

The report of the bank commissioners in January, 1859, took a different view of the situation than Mr. Gouge had done. They were of the opinion that a system which had withstood the test of two successive years of financial depression should receive the stamp of approval from the public. In fact, the commissioners were convinced that the banks of the state "enjoy today a larger share of public confidence than at any former period." The recent experience with the bonds of Missouri and other states whose credit had been badly shaken during the panic led the commissioners to recommend that Illinois bonds be given the preference over those of other states. They also asked that they be given authority to prosecute offenders against

⁸¹*Reports of Session*, 1859, p. 193.

⁸²U. S., 36 Cong., 1 Sess., Senate, Ex. Doc., no. 3, 368.

⁸³*Bankers Magazine*, xiv, 7.

the foreign small note law, in view of the fact that prosecuting attorneys did not take the act seriously.⁸⁴

Governor Bissell in his message pronounced the banking system "in the main satisfactory" and cited the fact that but six banks out of fifty-four had failed, as proof of his statement. He recommended no changes in the banking act, save that the banks be compelled to substitute new bills for the mass of filthy and almost unrecognizable paper which they continued to circulate. He did, however, express a wish that the legislature could prevent citizens of other states from "depreciating" Illinois paper. As it was, a traveler from Illinois was compelled to submit to a discount of his bank notes as soon as he crossed the line into another state.⁸⁵

A considerable minority of the members of the legislature favored a bill which provided for the establishment of "specie banks," entirely independent of the existing system, their idea being that in addition to banks of issue there should be state banks which made a specialty of furnishing eastern exchange at reasonable rates. Most of the members, however, were of the opinion that the existing banking system had acquitted itself so well that it should be left as it was, so no banking measures were passed during the 1859 session. Had the members followed the recommendation of the commissioners in regard to giving Illinois bonds the preference over those of other states, the break down of the banking system two years later would undoubtedly have been prevented. Illinois was not only meeting the interest on her indebtedness promptly but had reduced her outstanding obligations to eleven millions. Moreover, the constitution of 1848 forbade the increase of the state debt in time of peace unless such action were first approved by a majority of the voters at a general election.⁸⁶ On the other hand, a large part of the securities purchased by newly formed associations were those of the State of Missouri, whose debt already exceeded twenty-five millions, although she had a population of less than a million and

⁸⁴*Reports of Session*, 1859, p. 193.

⁸⁵*Senate Journal*, 1859, p. 23.

⁸⁶Article iii, Section 37.

was far behind Illinois in the extent of material progress made.⁸⁷ The general sentiment throughout Illinois seems to have been that the banking system was as satisfactory as it could be made and that the general assembly should let well enough alone.⁸⁸

The year 1859 witnessed a recovery from the hard times of the preceeding two years, but one marked by caution. Legitimate enterprises in Chicago were able to obtain plenty of eastern capital at ten per cent, but only the best unincumbered property was accepted as security.⁸⁹ However, neither Chicago nor the rest of the state could be said to be prosperous, although they had learned the much needed lesson that "patience, prudence and economy are the most trustworthy roads to fortune."⁹⁰ The grain crop of 1859 was of good quality and brought a good price but it was not a very large one, hence the condition of the eastern exchange market was little better than it had been in 1857 and 1858.⁹¹ The year 1860, on the other hand, was the most prosperous one in the history of Illinois agriculture up to that time. The crops of that year were unparalleled in size and excellence, while the extraordinary demands on the part of European countries kept up prices. Eastern exchange soon returned to normal and bank currency was in great demand for crop moving.⁹² As a result the issues of the existing banks were expanded and many new associations were formed.⁹³

The natural expansion of the currency, however, was interfered with by another slump in the value of the Missouri bonds which necessitated a call being made upon eighteen of the banks for the deposit of more securities or the retirement of a portion of their notes.⁹⁴ The banks succeeded in adjusting their issues to the amount of securi-

⁸⁷*Illinois State Journal*, January 17, 1859.

⁸⁸*Missouri Democrat*, February 5, 1859.

⁸⁹*Bankers Magazine*, xiii, 625.

⁹⁰*Ibid.*, xiv, 410.

⁹¹*Chicago Tribune*, January 1, 1861.

⁹²*Ibid.*

⁹³*Reports of Session (Senate)*, 1861, p. 331.

⁹⁴*Illinois State Journal*, February 20, 1860.

ties on deposit but a number of the down state institutions had practically suspended specie payment, for the Chicago banks were protesting down state issues at the rate of eighty to one hundred thousand dollars a month and sending them in to the auditor for redemption.⁹⁵ Many country bankers, in fact, purposely allowed their notes to go to protest in the belief that it was less expensive to sacrifice their securities than to keep in their vaults a large amount of specie.⁹⁶ To many of the down state bankers the custom of the large Chicago institutions of sending a messenger to the country banks with a large amount of bills for redemption was exceedingly annoying. In spite of the act of 1857 which forbade such a practice, the Reaper's Bank of Fairfield undertook to discourage the presentation of its notes by "tiring out" Chicago bank messengers. On one occasion, when a representative of Willard and Atkins of Chicago presented for redemption at the bank's counter several packages, each containing five or six hundred dollars worth of the bank's notes, the cashier proceeded to redeem the notes one by one with five and ten cent pieces, stopping frequently to attend to other duties. Finding at the close of the day's business that but one hundred and fifty dollars worth of notes had been redeemed, the messenger had the rest of the notes protested for non-payment and the auditor was called upon to place the bank in liquidation. The officers of the bank resorted to injunction proceedings and the case was ultimately decided by the Illinois supreme court. Here it was held that payment of notes "on demand" meant that the holder is entitled to present all his notes simultaneously and receive specie for them in a lump sum.⁹⁷

As the winter of 1860-61 approached and the political situation in the South became more acute, southern securities began to decline and the price of eastern exchange in terms of Illinois currency rose correspondingly.⁹⁸ The

⁹⁵*McElroy's Reporter*, April 10, 1860.

⁹⁶*Bankers Magazine*, xv, 411.

⁹⁷See *Reaper's Bank vs. Willard*, 24 *Illinois*, 433. *Bankers Magazine*, xiv, 487.

⁹⁸*Chicago Tribune*, January 1, 1861.

bank commissioners, upon examining the securities in the hands of the auditor, found it necessary to call upon twenty-two banks for additional deposits, the amounts in the different cases varying from \$2,062 to \$51,070. They were granted the usual forty days grace in which to make good the deficiency or retire a part of their circulation. The Chicago bankers, however, were too concerned over the prospects of civil war to be willing to await the action of the delinquent banks and immediately agreed to refuse to receive the notes of any of the banks under call until they had been restored to good standing. The period of grace would have expired January 1, 1861, but the commissioners, late in December, extended the time to March 20.⁹⁹ The holders of the notes of these banks made vigorous objection to the commissioners' action on the ground that the notes were being subjected to a discount of fifteen to twenty per cent, whereas if the banks were closed at once and their bonds sold, an average of ninety-two cents on the dollar would be realized. The commissioners, however, were of the opinion that any effort to sell a large number of bonds on the New York market would only result in a heavy loss to the note holders.¹⁰⁰ Furthermore, between November 20, the date of the original call, and December 20, the date when the extension of time was granted, the securities of nearly every state in the Union had depreciated to such an extent that out of justice to the twenty-two banks under call it would have been necessary to require nearly every bank in the state to deposit additional bonds.¹⁰¹

The beginning of the year 1861 marks so distinct a transition in the history of stock banks, that a review of the development of the system up to that time, and an analysis of its internal workings as revealed in the statements issued by the state officers will not be out of place at this point.

⁹⁹*Reports of Session* (Senate), 1861, p. 333; *Illinois State Journal*, November 20, 21, 1860.

¹⁰⁰*Reports of Session* (Senate), 1861, p. 333; *Illinois State Journal*, December 21, 22, 1860; *St. Louis Democrat*, December 8, 1860.

¹⁰¹*Reports of Session* (Senate), 1861, p. 333.

The system had been given a fair trial for nine years and the officers to whom the work of supervision had been entrusted had performed their duties with ability and honesty. The note issues had been so fully protected by state and federal bonds that out of fourteen banks which had gone into liquidation the securities of but one fell short of providing for the redemption in full of all the outstanding issue. And yet the system could not have been pronounced a successful one. In the first place, the notes were circulated with a fair degree of ease within the state, but they were subjected to a discount as soon as they were carried beyond its borders.¹⁰² In the next place, the legislature failed to make any discrimination in favor of Illinois securities and banking associations bought up at a bargain bonds of unstable value which failed utterly to afford the needed protection to note holders when the Civil War broke out.¹⁰³ Lastly, at no time during their existence had the banks kept on hand an adequate supply of specie for the redemption of their notes. Instead of facilitating the process of redemption, they sought to make it as difficult as possible. No system of note issue could be termed successful in which the holders of notes in the great majority of cases were compelled to resort to the cumbersome process of protest and sale of securities in order to exchange them for specie.¹⁰⁴

The following table¹⁰⁵ contains the aggregate statements of the ninety-four banks reporting their condition to the bank commissioners, October 1, 1860, and the balance sheets of (1) a large Chicago bank, (2) the largest down state bank, (3) one of the small group of conservative country banks, (4) one of the more numerous banking associations organized solely to obtain notes and lend them through some third party:

¹⁰²*Champaign Gazette*, November 28, 1860.

¹⁰³*Senate Journal*, 1863, p. 22.

¹⁰⁴*Bankers Magazine*, xiv, 7.

¹⁰⁵The data given in the table were obtained from *Reports of Session* (Senate), 1861, p. 376.

RESOURCES

Item	Total for 94 banks	Marine Bank of Chicago	State Bank Shawneetown	McLean County Bank Bloomington	E. I. Tinkham & Co.'s Bank McLeansboro
Stocks deposited as security for notes	\$12,264,580.74	\$ 55,753.83	\$ 712,000.00	\$ 52,696.24	\$ 108,092.00
Real estate, etc.	116,551.00		11,500.00		
Notes of other banks.....	287,111.25	5,000.00	5,906.00	24,540.00	
Due to the bank other than loans and discounts.....	1,950,244.30	40,600.00		12,205.29	
Loans and discounts.....	5,408,76.28			101,645.82	
Specie	302,005.26	26,795.00	687.24	3,004.33	
Deposited with other banks.....	3,793,753.22	597,458.14	632,223.37	2,057.53	49,787.00
Expense account	19,459.76				
Checks, drafts and other cash items	37,920.47			3,339.78	
Surplus stocks and suspended debt	85,492.21				
Profit and loss.....	37,791.26			948.68	
Total	19,430,985.74	794,000.97	\$ 1,302,316.61	\$ 200,527.92	\$ 158,779.00
LIABILITIES					
Capital stock	\$ 6,750,743.97	\$ 498,000.50		\$ 50,000.00	\$ 50,000.00
Debts other than deposits and notes	422,220.36	154,464.12	652,500.00	7,007.08	
Deposits	807,763.82	19,378.85		62,334.06	
Notes outstanding	11,010,837.00	31,795.00	651,736.00	40,097.00	108,779.00
Due other banks.....	64,200.72			28,331.80	
Exchange, interest and expense ac- count	25,628.52				
Surplus bonds	286,614.26				
Profit and loss.....	68,977.99		58,086.61	2,806.18	

The aggregate statement for October 1, 1860, shows the condition of the banks when the stock system under the stimulus of prosperous times had attained its maximum growth. In addition to the ninety-four banks from which returns were received there were eighteen others in existence at this time. They evidently had not complied with the provision of the act calling for a quarterly statement of their condition. The fact that \$12,264,580.74 in securities had been deposited as a protection to but \$11,010,837 in notes furnished a safe margin against the ordinary fluctuations of the stock market. More than half of this amount of securities had been deposited since the amendment of 1857, hence the bank making the deposit received in notes but ninety per cent of the market value of its bonds.¹⁰⁶

Practically every item in the statement reveals the fact that but few of the banks were conducting a regular banking business. Only fourteen of them owned even enough real estate to provide a site for their place of business making a total amount of but \$116,551.40 invested in this way.¹⁰⁷ The item, "notes of other banks," represents the holdings of but thirty-two institutions out of the ninety-four, while but thirty-eight banks reported any indebtedness to other banks. Furthermore, but fourteen banks carried on a loan and discount business of their own, which accounts for the fact that but \$540,876.28 of the nineteen millions of resources was used in this manner.¹⁰⁸ On the other hand, nearly all the banks had large amounts on deposit with other banks, this item alone aggregating \$3,793,752.22. All these facts go to show that most of the stock banks were mere devices for obtaining a supply of paper money to use in connection with a private banking business where the restrictions placed upon an incorporated concern could be avoided. Closely related to the deposits in other banks is the \$1,950,244.39 due from banks and

¹⁰⁶*Reports of Session* (Senate), 1859, p. 206.

¹⁰⁷*Ibid.*, 1861, pp. 376 ff.

¹⁰⁸*Ibid.*

individuals, aside from loans and discounts. A large part of this amount probably can be attributed to the purchase of bills of exchange arising from the sale of produce.¹⁰⁹

The remainder of the banks' note issues were invested in bonds which served as security for a further note issue and so on as long as the necessity of redeeming the notes in specie could be avoided. That most of the banks had no intention of redeeming their notes in specie can be seen from the fact that but sixty-one of them kept any specie on hand at all and half of these had a thousand dollars or less. The \$302,905.26 on hand at the time of the report was less than three per cent of the outstanding circulation,¹¹⁰ not to mention the other demand obligations. The minor items in the aggregate statement column are either self explanatory or furnish little indication as to their exact character.¹¹¹

In the second column is represented a peculiar balance sheet, that of the Marine Bank of Chicago. It will be noted that the association had invested but \$55,753.83 of its half a million dollars of paid up capital in stocks and on this security had issued but \$31,795 in notes. One could conclude from this much of the bank's statement that it was carrying on a discount and deposit business but a glance at the other items shows that this is not the case. Deposits aggregate but \$19,378.35 and no loans and discounts whatever were made. By far the largest part of the bank's funds had been loaned through another bank or banks, but no use was made of the "endless chain" device of securing a large supply of bank notes by using the existing issue for the purchase of more bonds. The Chicago banks found other lines of banking more profitable than note issue under a restrictive law.¹¹²

¹⁰⁹*Reports of Session* (Senate), 1861, pp. 376 ff.

¹¹⁰The banks of Indiana, at the close of 1860, had \$2,296,648 in specie and but \$5,755,201 in notes; and those of Ohio \$2,377,466 in specie and \$8,143,611 in notes. *U. S. Comptroller of the Currency, Report*, 1876, p. 116.

¹¹¹*Reports of Session* (Senate), 1861, pp. 376 ff.

¹¹²Andreas, *History of Chicago*, ii, 617.

In marked contrast with the Marine Bank is the largest of all the stock banks and the successor of the old Bank of Illinois, the State Bank of Shawneetown. In spite of its high sounding name, however, it had no official connection with the state. It had invested all its capital in bonds, obtained notes for them and with these had obtained more bonds as security for more notes. The \$11,500 charged to real estate is of interest in that it probably represents the "present worth" of the \$80,000 structure erected by the old Bank of Illinois. It will be seen that practically all the rest of the bank's funds were loaned out through other agencies or invested in bonds.

The McLean County Bank is one of the very few stock banks which conducted their affairs about as a small bank issue would do at the present time. The capital stock had been invested in securities and the full amount of notes issued thereon, but in comparison with other stock banks, a large amount of discount business had been carried on and an unusual amount of deposits received. The specie reserve while small was much larger than the average. This bank was one of the few to survive the outbreak of the rebellion.¹¹³

The bank maintained by Tinkham and Company, private bankers of Chicago, affords an example of the type of institution which was established in an out of the way place for the sole purpose of obtaining a supply of currency. The incorporators of the enterprise made no effort to carry on a banking business at the place mentioned in the charter and on the notes, but circulated their currency in Chicago or some other distant point where there was little chance of anyone taking the trouble to find the bank's counter. Tinkham and Company had evidently used about \$50,000 of the note issue in connection with their private banking business and had invested the rest in bonds.

The table as a whole shows that the stock bank system, instead of providing the state with adequate and dependable

¹¹³*Reports of Session (Senate), 1863, i, 215.*

facilities for all lines of banking, had created a machine for the issue of paper money.

As the secession movement advanced and the prospect of war became more of a certainty, it was generally agreed that some radical steps must be taken to bolster up the currency system of Illinois. Governor Yates in his inaugural message joined with the bank commissioners in recommending: (1) the limitation of the choice of securities to the bonds of Illinois and the United States, (2) that one or more cities of the state should be selected as central redemption points where, for a small fee, the notes of a stock bank could be exchanged for specie.¹¹⁴ The Chicago bankers were especially desirous of securing the adoption of the latter recommendation and a convention of bank presidents and cashiers was called by the bankers of that city to formulate plans for a redemption system which would obviate the necessity of sending messengers to remote parts of the state to the counters of country banks. The Chicago banks urged each country association to retire one-tenth of its circulation and to open a redemption agency at Springfield or Chicago. As compensation to the down state banks for retiring a portion of their notes and selling the securities back of them at such an unfavorable time, the Chicago banks agreed to pay an extra premium of five per cent for all New York sight exchange delivered to them by country banks during the ten days following the making of the agreement. As a hint concerning what would follow upon an unfavorable response to the proposition, the Chicago bankers mentioned the fact that they had on hand large amounts of the notes of down state banks which were likely to be presented for redemption at any time. When the convention of presidents and cashiers met, January, 1861, with representatives present from thirty-seven banks, a system of mutual redemption was formulated, but the banks of themselves could accomplish little as the existence

¹¹⁴*Reports of Session (Senate)*, 1861, pp. 21, 335.

of all except a few of them was threatened by the probable secession of the southern states.¹¹⁵

The question of banking reform was therefore one with which the legislature alone was competent to deal and it responded to the appeal of the Chicago bankers by enacting an amendment, February 14, 1861, entitled "An act to amend the general banking law to afford greater security to the public." First of all, it was provided that thereafter all securities deposited with the auditor must be those of Illinois or the United States. In order to encourage the existing banks to dispose of their southern bonds, the act provided that if securities which had been below par for two years were exchanged for securities which had been at par for two years, notes should be issued on the latter up to their full face value, until September, 1861. After that date, the usual ten per cent margin between notes and securities should be required. Any bank whose circulation exceeded the lawful limit was given sixty days in which to make good the deficiency in securities. If at the end of that time there was still a deficiency, the auditor was required to place the bank in liquidation. Before the passage of this act the auditor had been required to sell the bonds of banks whose notes had been protested and to pay the note holders in specie out of the proceeds. The present act provided that the auditor should redeem the notes directly with bonds and let the note holder dispose of the bonds as best he could.

The act further provided for the adoption of a central redemption system. All banks organized thereafter were required to maintain an agency in Springfield or Chicago, while the older banks were induced to do so by being offered a special thirty day exemption from being placed in liquidation in case their notes were protested. Furthermore, persons protesting the notes of any existing bank which should establish an agency were entitled to but six per cent interest instead of the usual twelve per cent which had been paid to holders of protested notes. The agency thus

¹¹⁵*Illinois State Journal*, December 19, 1860, January 17, 1861; *Bankers Magazine*, xiv, 581; *Chicago Tribune*, January 1, 1861.

provided for could be either a separate or joint affair and was permitted to charge three-fourths of one per cent commission during the year 1861 and after that not more than one-half of one per cent.

In order to keep the public more closely in touch with the banking situation, the governor and commissioners were required to issue quarterly statements of the value of the securities then on deposit. Every six months, the banks were required to give to the public a complete list of their stockholders and the amount of their respective holdings. As a check upon the excessive issue of notes, it was specified that no bank could thereafter issue an amount greater than three times the actual paid up capital. The minimum capital requirement was reduced to twenty-five thousand dollars in actual cash. Thereafter banks could not be established in any town containing less than one thousand inhabitants, an exception being made of county seats. The charters of all banks having no bona fide officers or place of doing business were declared forfeited and lending through a third party was punishable by forfeiture of all interest due. Whether a bank chose to issue notes or not, it was required to keep a minimum bond deposit of \$5,000 in the auditor's office.¹¹⁶

In addition to placing the existing system upon a firmer basis so far as could be done without infringing upon the rights of banks already in operation, the legislature provided for the establishment of a great central banking system entirely distinct from the stock banks. The state bank of Indiana had met with such success and its paper bore so high a reputation that the Illinois legislature believed that by providing a similar institution the currency ills of the state would be at an end. The new institution was to be called the Union Bank of Illinois and was to continue its existence for twenty-five years after its charter had been approved at the next general election. Three months after the ratification of the act by the people, the bank commissioners were to divide the state into not more

¹¹⁶*Laws of Illinois*, 1861, pp. 39 ff.

than thirty districts, in each of which a branch bank was to be located. The capital was not to exceed ten millions and every branch was to be held responsible for the debts of the others. The maximum rate of interest was fixed at seven per cent. The system was referred to as the "specie system" of banking as contrasted with the "stock system." The only safeguard provided for demand notes was that they could not be issued in excess of twice the amount of paid up capital.¹¹⁷

At the next general election in November, 1862, the bill was submitted to the people and rejected by a large vote.¹¹⁸ The reasons assigned for its unpopularity were: (1) It was expected that the greenbacks would furnish an ample supply of good paper money. (2) A constitutional convention was about to meet and the general opinion was that the solution of the banking question should be left to it.¹¹⁹ (3) The collapse of the stock banking system, about to be described, occurred between the passage of the act and the date of its submission to the people. As a consequence, a strong feeling against banks was engendered.¹²⁰

It will be remembered that the bank commissioners in November, 1860, called upon twenty-two of the one hundred and twelve stock banks in the state for more securities. When the final date on which the deficiency could be made good arrived (March 20), seventeen of the banks with an aggregate circulation of \$2,726,795 were still unable to comply with the call and were placed in liquidation.

Meanwhile the southern states had one by one seceded from the Union and their bonds in the hands of the Illinois auditor to the amount of \$9,467,500 had rapidly declined in value. Missouri bonds, which were quoted at 67 cents on the dollar on April 1, by April 17 had fallen to 51 cents and the prospect of a recovery daily grew less. The notes of thirty-two stock banks were refused by the Chicago bankers, and the paper of as many more banks was on very

¹¹⁷*Laws of Illinois*, 1861, p. 53.

¹¹⁸*Bankers Magazine*, xv, 539, 554.

¹¹⁹*Champaign Gazette*, October 30, 1861.

¹²⁰*Illinois State Journal*, June 26, 1861.

dangerous ground.¹²¹ Outside of Chicago, notes which were discredited in that city were accepted at fifty cents on the dollar, while the paper of other banks circulated about as usual. The down state business men protested that the strictness of the Chicago bankers was merely making a bad situation worse by hastening the ruin of the great majority of the country banks.¹²² The merchants of Chicago adopted a more liberal policy toward the stock banks. Believing that the war would be of short duration, they agreed to take at par all Illinois paper not already discredited by Chicago bankers,¹²³ but this arrangement became intolerable when New York exchange reached a premium of twenty per cent and threatened to go higher. When on May 15, Missouri stock had fallen to 35 cents on the dollar, Tennessee to 45 and Virginia to 43 and the collapse of the greater part of the stock banks was bound to follow, the Chicago merchants hastened to abrogate their agreement and to accept Illinois currency at what it would bring in New York exchange.¹²⁴

Everywhere the whole issue of stock notes began to be discredited. Merchants refused to give change in coin for a bank note and persons depositing Illinois notes at a bank were required to accept payment in the same from the bank.¹²⁵ The business men of Springfield voted to receive the notes of only thirty-six banks which had deposited northern state bonds with the auditor.¹²⁶ As a result of the scarcity of money a considerable amount of specie was forced out of hiding places and into circulation.¹²⁷

If the war had begun in the autumn of 1860 instead of in the spring of 1861, the farmers of the state would have been caught with an immense amount of rejected and depre-

¹²¹*Chicago Tribune*, April 17, 1861; *St. Louis Democrat*, April 3, 1861; *Champaign Gazette*, April 10, 1861.

¹²²*St. Louis Democrat*, April 3, 1861; *Missouri Republican*, quoted by *Illinois State Journal*, April 6, 1861.

¹²³*Chicago Tribune*, May 2, 1861.

¹²⁴*Ibid.*, May 16, 1861.

¹²⁵*Illinois State Journal*, May 16, 1861.

¹²⁶*Ibid.*, May 18, 1861.

¹²⁷*Ibid.*, May 20, 1861.

ciated currency on their hands; but as it was, the large city banks were the heaviest losers. At the next session of the legislature they demanded that they be reimbursed under the guise of a war measure, but they were unsuccessful.¹²⁸

The provision of the original banking act, which permitted the banks to deposit any state securities on which six per cent interest was regularly paid, had naturally led banking associations to purchase the less expensive southern securities. It was this fact that caused the almost complete collapse of the whole system of banking in Illinois. The securities of all the states except a few in the North and East had shrunk almost fifty per cent in value within six months and desperate efforts were made by conservative business men to eliminate all currency based upon depreciated bonds.¹²⁹ To this end a conference of down state bankers was held, June 4, 1861, at which representatives from Springfield, Jacksonville, Decatur, Alton, Danville, and Carbondale were present. The conference made up a list of fourteen banks, all of whose notes were protected by the bonds of northern states, and agreed to accept at par the notes of any bank on the list and to reject the paper of all other stock banks. This action reduced the amount of paper in good standing to \$1,076,737, whereas six months before over twelve millions was in circulation.¹³⁰ Much of the depreciated paper continued to be used, however, at what were known as merchants', bankers', and railroad rates. Lists of notes and their rating were published in the newspapers and posted in stores and railway stations for the guidance of note holders.¹³¹ The reduction in the amount of media of exchange caused no appreciable change in prices for the volume of business had diminished to such an extent that it could easily be transacted with the remaining notes of Illinois banks and those of Indiana and Ohio banks.¹³²

¹²⁸*Journal of Constitutional Convention, 1862*, February 6, 1862.

¹²⁹*Chicago Tribune*, May 23, 1861.

¹³⁰*Illinois State Journal*, June 5, 1861.

¹³¹See Chicago, Springfield and other local newspapers for lists.

¹³²*Chicago Tribune*, May 30, 1861.

In order to assist note holders in disposing of their notes, firms like Tinkham and Company and the Ridgely Bank in Springfield established agencies for the conversion of rejected notes into bonds and then into New York exchange. For a few weeks these firms along with scores of individual note holders, poured the notes into the office of the state auditor at the rate of \$100,000 a day; in fact, that official was compelled to close his office for a time until the accumulation of notes could be counted, cancelled and burned.¹³³

In the meantime, the bank commissioners were trying to secure additional bond deposits from a large part of the banks, but were meeting with no success. On May 24, twenty-three of these were added to the delinquent list. The remaining seventeen were left undisturbed because their notes were backed by bonds of northern states and those of the United States, the latter, however, being worth but eighty-five cents on the dollar. The banks were compelled to agree to establish central redemption agencies in return for their being exempted from call, the advantage to them of such exemption being that in case their notes depreciated greatly they could buy them up at a great discount and present them to the auditor for redemption in bonds, dollar for dollar. On the other hand, if their notes were under protest the note holder had a prior lien not only on all the bank's assets but also upon the stockholders up to an amount equal to their respective holdings.¹³⁴

The rapid disappearance of Illinois notes from the channels of trade placed business upon a specie basis and the few banks which remained paid out no more local currency at their counters. The notes of the small group of banks in good standing were accepted at the rate of ninety cents on the dollar, while all the rest were refused. Chicago had been rated as a "dear market" so long as business was transacted on a paper basis, but now the wholesale houses of this city were enabled to compete on equal terms with those of other cities.¹³⁵

¹³³Commissioners' report in *Illinois State Journal*, June 20, 1861.

¹³⁴*Ibid.*

¹³⁵*Bankers Magazine*, xv, 947.

A comparison of the auditor's report for October, 1861, with those of July and April of the same year shows the rapid progress made by that officer in retiring and destroying the stock bank notes sent in for redemption. On April 1, \$11,107,600 was outstanding. By July 1, this amount had been reduced to \$7,294,855 and by October 1, to \$3,507,686.¹³⁶ As the notes were presented to him, the auditor calculated the ratio which they bore to the total outstanding issue of the bank in question, and paid to the note holder the same proportion of that bank's securities. For instance, during the month of October, 1861, there were presented notes with a par value of \$279,089, but the holders received bonds worth only \$160,419.80, these amounts having the same relation to the total amount of the bank's notes and bonds respectively.

It is impossible to estimate the total loss incurred by bank creditors through the collapse of the stock banks in 1861 for the reason that many persons sold their bonds or notes to brokers at a great sacrifice, while others were in a position to hold their bonds until the credit of states like Missouri, for example, recovered from the effects of reckless finance and the depression which accompanied the war. If the rate at which the note holders were reimbursed by the auditor could be taken as a criterion, the loss could be placed at about forty-four per cent but, as has been shown, large numbers of persons submitted to a second heavy discount at the hands of brokers,¹³⁷ the amount of which it is not possible to estimate.

By the middle of November but \$1,766,000 worth of securities remained in the auditor's hands, \$1,221,000 of which were the bonds of Illinois. Two of the seventeen solvent banks had been called upon for additional securities, leaving but fifteen in unquestionable standing. The latter group had an outstanding circulation of but \$504,346, secured by \$600,000 worth of bonds, \$511,317 of them

¹³⁶Auditor's report, in *Illinois State Journal*, July 2, October 10, 1861.

¹³⁷*Illinois State Journal*, November 6, 1861; Message of Governor Yates, *Senate Journal*, 1863, p. 24, or *Reports of Session*, 1863, p. 110.

being various Illinois securities. On January 1, 1862, the auditor reported that the notes of but three of the fifteen banks were received at par, the rest being subjected to a discount of thirty to forty cents, although their securities were quite as ample and of as good standing. The reason for the discrimination lay in the fact that the three banks in question had lived up to their agreement and had established agencies in Chicago where their paper could be redeemed in specie at a cost of but three-fourths of one per cent. Thirty-six of the stock banks had been in the hands of receivers for some time. The auditor, on behalf of the note holders, was entitled to a prior lien upon the proceeds obtained from the sale of the assets of these banks, but in January, 1862, he reported that he had not yet received a dollar from this source. On that date, the auditor was still engaged in exchanging bonds for the notes of fifty-seven banks.¹³⁸

The legislature in 1859 had provided that a referendum be taken at the general election of 1860 on the question of calling a convention to frame a new constitution. The proposition received the sanction of the voters and the convention met in Springfield in January, 1862. The events of the preceding year had revived the old hostility toward banks to such a degree that an article was inserted in the new constitution prohibiting absolutely the incorporation of any institution with banking powers. Although the convention was not able to deprive the few remaining banks of their right to exist, it provided that they should at once restrict their issues to notes of not less than ten dollars in denomination. In 1864 the minimum was to be raised to twenty dollars, and in 1866 note issue was to cease entirely.

In their "address to the people" the members of the convention assigned the following reasons for their action: (1) The advocates of stock banking had led the public to believe that local bank paper was needed in addition to the

¹³⁸*Proceedings of Constitutional Convention, 1862*, pp. 65, 85; Report of Auditor, in *Bankers Magazine*, xvi, 650; *Chicago Board of Trade Reports*, 1861, p. 63.

existing supply of metallic money in the state, but the paper had merely driven out a like amount of specie. (2) The system had broken down completely and might as well be abolished. (3) Gold and silver, together with the new United States notes, would furnish a plentiful and dependable method of exchange. (4) Patriotic devotion to the cause of the Union demanded that all local bank paper be retired so as to give the United States a clear field for the circulation of its notes.¹³⁹ The article dealing with banks was submitted to the people separately and was received with less disfavor than was the main body of the constitution, the banking article being rejected by 3,801 votes and the whole constitution by over 16,000 votes.

In his report of July 1, 1862, the auditor stated that there were then seventeen banks in operation with a circulation of \$511,286 secured by Illinois and United States bonds to the amount of \$574,532. He was still engaged in exchanging the securities of defunct banks for their notes.¹⁴⁰ Within the next six months, five new banks were started under the general law as amended in February, 1861, and the circulation was thereby increased to \$566,133, as compared with \$12,320,694, the amount reported by the auditor to the preceding general assembly.¹⁴¹

The bank commissioners now made a last desperate effort to rid the state of foreign small notes. They issued notices to prosecuting attorneys to the effect that the law must not be regarded as a dead letter, and visited certain counties in order to secure evidence against violators. In Christian County, for example, they secured the indictment of seventeen persons for passing the one,

¹³⁹*Proceedings of the Constitutional Convention*, 1862, p. 1049.

¹⁴⁰Classifying the banks by value of securities, we find the notes of

38 banks were redeemed at 50-60c

25 banks were redeemed at 61-70c

11 banks were redeemed at 71-80c

8 banks were redeemed at 81-90c

3 banks were redeemed at 90-95c

4 banks were redeemed at par

Illinois State Journal, July 7, 1862.

¹⁴¹*Reports of Session (Senate)*, 1863, p. 110.

two and three dollar bills of banks outside of Illinois. They soon found, however, that such a move was entirely unsupported by public sentiment and their efforts to enforce the act came to an end.¹⁴²

There is little doubt but that the stock banking system as amended in 1861 would have made a favorable showing had it had a fair trial. The restriction of securities to those of Illinois and the United States, the limitation of note issue and the redemption agency requirement remedied the fatal defects in the system. However, the large volume of United States notes, followed shortly after by the notes of the national banks, prevented a satisfactory demonstration of the merits of the revised banking system before it went out of existence. In 1865 the legislature abolished the office of bank commissioner and entrusted the supervision of the banks to the auditor and treasurer.¹⁴³ At that time there remained twenty-three stock banks with a circulation of \$199,364, based upon Illinois six per cent bonds valued at \$252,684.17. August 1, 1866, the ten per cent federal tax upon state bank notes became effective and resulted in the retirement of all but \$35,046 by November 30 of that year.¹⁴⁴

In 1867 the legislature authorized the existing stock banks to retire their notes, reduce their capital stock to five thousand dollars and continue their banking activities other than note issue. It was provided that thereafter "no more banks with power to issue notes . . . shall be organized."¹⁴⁵ The last official trace of the old stock banking system is found in the report of the auditor for 1869 in which he informed the legislature that he had in his possession \$631 in greenbacks as security for \$531 worth of bank notes still outstanding.¹⁴⁶

¹⁴²*Illinois State Journal*, December 4, 1862; *Bankers Magazine*, xvii, 241.

¹⁴³*Laws of Illinois*, 1865, p. 20.

¹⁴⁴*Reports of Session* (Senate), 1867, p. 115.

¹⁴⁵*Laws of Illinois*, 1867, p. 49.

¹⁴⁶*Reports of Session* (Senate), 1869, p. 324.

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 Eighteenth Congress, First Session, Documents, 128, 133.
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INDEX

- Auditor's warrants, circulation of, 41.
- Bank commissioners, provided for, 137; reports, 142, 144, 153, 154; efforts to save free bank system, 157, 169; duties under act of 1861, 165.
- Bank of Edwardsville, location, 14; difficulties, 14, 16; government deposits, 15; relations with other banks, 16; suspension of operations, 17; analysis of operations, 20; reasons for brief existence, 21.
- Bank of Illinois (Shawneetown)
 1818-1823. Location, 9; provisions of charter, 9 *et seq.*; government deposits, 11; character of management, 12; relations with other banks, 12, 16; devices for aiding note circulation, 12; suspension of operations, 13; analysis of operations, 20; reasons for brief existence, 21.
 1835-1843. Amendments to charter, 64; constitutionality of charter, 65; government deposits, 76; made part of internal improvement system, 78; dividends declared, 79; increase of capital, 79; branches, 80; investigation, 81; suspension of specie payment, 83, 88, 100; note issue, 86; mismanagement under new officers, 101; analysis of operations, 110 *et seq.*; suspension of operations, 104, 112; liquidation act, 123; progress of liquidation, 124 *et seq.*
- Bank of Kaskaskia, 19.
- "Banking and internal improvement" bond issue, 80, 83.
- Bissell, Governor, attitude toward free bank system, 147, 154.
- Carlin, Governor, attitude toward banks, 86, 88, 96, 113.
- Chicago bankers, plan of, for banking reform, 163.
- City and Bank of Cairo, provisions of charter, 19; failure to operate, 20; charter revived (1834), 64; operations during internal improvement era, 126 *et seq.*
- Coles, Governor, and the first state bank, 35.
- Constitutional limitations upon banking (1818), 22; (1848), 134; (1862), 172.
- Democratic party, attitude toward banks, 61, 85, 94, 132, 134, 139.
- Duncan, Governor, attitude toward banks, 59, 61, 70, 79, 85, 112.
- Duncan, James M., controversy over accounts, 52.
- Edwards, Ninian, and Bank of Edwardsville, 15, 17, 18; controversy with Secretary Crawford, 15, 16, 18; relations with first state bank, 42.
- English occupation, monetary system during, 6.
- Ford, Governor, relations with banks, 113, 117, 118, 120.
- Foreign small notes, 86, 141, 172.
- Free bank system, provided for in 1848 constitution, 134; adopted by legislature, 135, 138; provisions of law, 135 *et seq.*; defects of law, 139; organization of banks, 140, 142, 145, 147, 148, 153, 155; amendment of 1853, 141; of 1855, 144; of 1857, 148; of 1861, 164; condition

- of banks, 140, 142, 145, 147, 148, 153, 157 *et seq.*, 166, 170; effects of panic of 1854, 144; of 1857-8, 148, 150, 152; analysis of statements, 157 *et seq.*; effect of secession of South, 166; abolition of, 173.
- French, Governor, hostility to banks, 119, 133, 135, 138.
- French settlements in Illinois, monetary situation in, 6.
- Georgia banks, notes of in Illinois, 146.
- Godfrey, Gilman and Company, 61, 90, 93.
- Gouge, W. M., comments on Illinois banking system, 153.
- Illegal note issue, 129, 131, 140, 142.
- Indiana banks, notes of in Illinois, 131.
- Internal improvement system, 78.
- Michigan banks, circulation of notes in Illinois, 131.
- Missouri bonds as security for Illinois bank notes, 148, 151, 153, 154, 155, 167.
- Nebraska banks, agencies of in Illinois, 147.
- Panic of 1819, 21, 27; of 1837, 83; of 1839, 87; of 1854, 144; of 1857-8, 148, 150, 152.
- Private banks, 130, 131.
- Reapers' Bank, action of, 156.
- Redemption agencies, 163, 164.
- Reynolds, Governor, attitude toward banks, 48 *et seq.*
- Smith, George, banking operations, 129, 146.
- South, secession of, effect on banks of Illinois, 173.
- Specie, scarcity of, 7, 60, 153.
- Speculation in lead and pork, 90.
- State bank, meaning of term, 22.
- State Bank of Illinois, failure of attempt to establish in 1819, 23.
- First State Bank (1821-1831), controversy over incorporation, 24 *et seq.*; provisions of charter, 27 *et seq.*; character of officers, 30; loans to officers, 34; efforts to secure government deposits, 31; standing of note issue, 31, 41, 46, 48; constitutionality of charter, 32, 54; attitude of borrowers, 32, 47; indulgence toward borrowers, 33, 42, 46, 47, 51, 54; increase of note issue defeated, 34; investigation into its condition, 35 *et seq.*; measures for winding up affairs, 37, 46, 47, 51, 52, 53; loss to state due to operations, 40 *et seq.*, 57; attitude of Governor Edwards, 43 *et seq.*, 47; attitude of Governor Coles, 35; attitude of Governor Reynolds, 48 *et seq.*; the Wiggins loan, 50; analysis of statement, 55.
- Second State Bank (1835-1843), conditions responsible for establishment, 60; provisions of charter, 61 *et seq.*; branches, 67, 95, 103; officers, 67; subscription to stock, 65; struggle for control, 66; business methods, 67 *et seq.*, 90 *et seq.*, 105 *et seq.*; note issues, 62, 63, 71, 86, 95, 101, 103; efforts to obtain federal deposits, 72 *et seq.*, 87; made part of internal improvement system, 78; dividends, 79; increase of capital stock, 79; investigations by legislature, 81, 80, 93; suspension of specie payments, 83, 87, 88, 100; resumption of specie payments, 85, 98; operations in Alton, 90; connection with speculation, 90 *et seq.*; mismanagement of

directors, 101, 103; cessation of activities, 104, 109; analysis of statement, 105 *et seq.*; liquidation act, 115; progress of liquidation, 117, 120 *et seq.*

Union bank, effort to establish, 165.

Whig party, attitude toward banks, 61, 85, 102, 112, 132, 135.

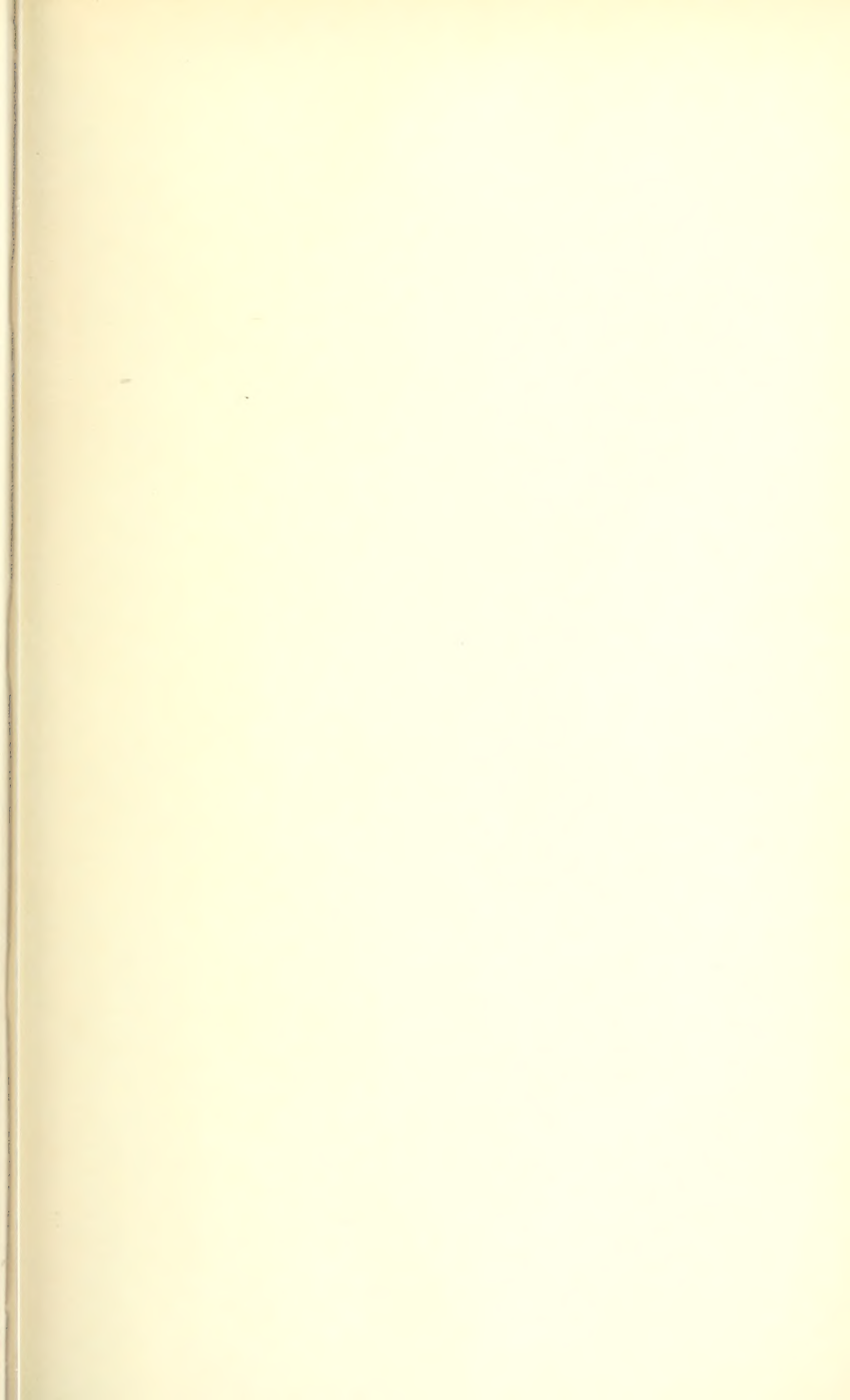
Whitney, Reuben, relations with the second state bank, 74 *et seq.*

Wiggins, Samuel, loan, 50, 51, 71; relations with the second state bank, 66, 71, 76, 80.

Wisconsin Marine and Fire Insurance Company, note issues, 131.

Yates, Governor, recommendations as to free bank system, 163.





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